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Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

HELEN NORMAN, KEVIN BELEN, AND LAURA STRADWICK,

Petitioners,

v.

STATE OF WASHINGTON,

Respondent.

On Petition For Writ of Certiorari
To The Supreme Court of Washington State

PETITION FOR WRIT OF CERTIORARI

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177 filed

QUESTIONS PRESENTED

1. Whether the Washington State Supreme Court's modification and expansion of the territorial description of the State violates:

(1) Article IV § 3 of the United States Constitution;

(2) the Congressional conditions for admission of Washington as a State; and

(3) President Benjamin Harrison's proclamation admitting Washington as a State.

2. Whether the Washington Supreme Court erred in its interpretation of the "Enabling Act", a federal statute defining the boundaries of the State of Washington pursuant to Article IV § 3 of the United States Constitution, and in conflict with New Jersey v. New York, 523 U.S. 767 (1998) and Washington v. Oregon, 211 U.S. 127, 135, 29 S.Ct. 47, 49, 53 L.Ed. 118 (1908).

3. Whether the Washington Supreme Court violated Petitioner's rights under Amendment VI of the United States Constitution to trial by jury of the state and district where the crime was alleged to have been committed, by its ruling that the northern border of Washington extends further north to the international boundary rather than the 49th parallel as it was defined by the United States Congress and President Benjamin Harrison in 1889.

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STATEMENT OF JURISDICTION

The opinion below was entered by the Washington State Supreme Court on February 21, 2002.

This Court's jurisdiction to review on a writ of certiorari the judgment of the Washington Supreme Court is Article III §§ 2, 3 of the United States Constitution and Supreme Court Rule 10(c); where a state court of last resort has decided several important federal questions in a way that conflicts with relevant rulings of this Court and has decided an important question of federal law that has not been, but should be, decided by this court.[1]

CONSTITUTIONAL, STATUTORY AND TREATY PROVISIONS

Article IV § 3 United States Constitution

> New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

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[1] This Petition raises, but does not address, the question of whether this Court's original jurisdiction extends to a unique case such as this involving a State boundary, federal treaties, and territorial interests of the United States government.

> The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Article VI United States Constitution

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Amendment VI United States Constitution

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Article XXIV Washington Constitution

> The boundaries of the state of Washington shall be as follows: Beginning at a point in the Pacific ocean one marine league due west of and opposite the middle of the mouth of the north ship channel of the Columbia river

thence running easterly to and up the middle channel of said river and where it is divided by islands up the middle of the widest channel thereof to where the forty-sixth parallel of north latitude crosses said river near the mouth of the Walla Walla river; thence east on said forty-sixth parallel of latitude to the middle of the main channel of Shoshone or Snake river, thence follow down the middle of the main channel of Snake river to a point opposite the mouth of the Kooskooskia or Clear Water river, thence due north to the forty-ninth parallel of north latitude, thence west along said forty-ninth parallel of north latitude to the middle of the channel which separates Vancouver's island from the continent, that is to say to a point in longitude 123 degrees, 19 minutes and 15 seconds west, thence following the boundary line between the United States and British possessions through the channel which separates Vancouver's island from the continent to the termination of the boundary line between the United States and British possessions at a point in the Pacific ocean equidistant between Bonnilla point on Vancouver's island and Tatoosh island light house, thence running in a southerly course and parallel with the coast line, keeping one marine league off shore to place of beginning; until such boundaries are modified by appropriate interstate compacts duly approved by the Congress of the United States.

Treaty Between the United States of America and the United Kingdom Concerning the Boundary

Between the United States and the Dominion of Canada from the Atlantic Ocean to the Pacific Ocean. ("Treaty of 1908", appendix at 56).

Organic Act to Establish the Washington Territorial Government, 10 Stat. at L. 172, chap. 90 (1853). Appendix at 116.

Enabling Act for creation of Washington State 25 Stat. at L. 676, chap. 180 (1889). Appendix at 84.

Treaty with Great Britain of Limits Westward of the Rocky Mountains (1846). Appendix at 111.

Presidential Proclamation for admission of Washington State 26 Stat. at L. 1552 (November 11, 1889) Appendix at 81.

STATEMENT OF THE CASE

1. Statement of Facts

Whatcom County Washington is the north-western most county in the contiguous United States. It is located at waters' edge to the west and bordered by Canada to the north. Petitioners in these consolidated cases were arrested by United States Customs agents operating at the International Boundary with Canada and were charged with violation of the Washington State criminal code.

All criminal acts alleged to have been committed in these cases occurred north of the 49th Parallel of north latitude, but south of the International Boundary that divides the United States and Canada. All parties (including Washington State) stipulated to the factual bases for location of the criminal acts. The location of the acts and the fact that they occurred north of the 49th Parallel but south of the International Boundary were never in dispute in these cases.

Each party stipulated to the relevant facts for each Petitioner as follows.

Helen J. Norman - U.S. Customs agents reported that on September 23, 1996, Helen J. Norman, a British National, entered the United States via the Peace Arch Port of Entry as a passenger in a vehicle that was referred to a secondary inspection. During a search incident to that inspection, agents discovered 41 tablets, later confirmed as Valium, the trade name for the schedule IV controlled substance Diazepam. The pills were found in Ms. Norman's purse, and were not contained in a prescription bottle.

After agents read her constitutional rights and she waived them, Ms. Norman admitted she did not have a prescription for the Valium. She said she is a nurse in England and had gotten the pills from one of her patients. Ms. Norman is charged with Unlawful Possession of a Controlled Substance.

Kevin C. Belen - On March 23, 1996 U.S. Customs agents took Kevin C. Belen in to custody at the Peace Arch Port of Entry. Belen had entered the United States and was found in possession of a wallet containing identification and credit cards belonging to Alex Chung. Belen admitted that he had found the wallet at the Ocean Star Arcade in Vancouver, British Columbia, and used the credit cards over ten times in Canada. Officers contacted Alex Chung, who like Belen, resides in Vancouver, British Columbia, and said he had lost his wallet at the arcade. Mr. Belen is charged with Possession of Stolen Property in the 2nd Degree.

Laura Stradwick - On November 30, 1996, Laura Stradwick entered the United States at the Blaine Port of Entry as a passenger on a Greyline Bus. Ms. Stradwick was referred to a secondary Customs search.

Agents discovered 7.2 grams of methamphetamine hidden in her bra. Ms. Stradwick is charged with Unlawful Possession of a Controlled Substance.

The Washington Constitution and the federal acts that created the State define the northern border of the State as the 49th Parallel of north latitude. By treaty, the International Boundary with Canada (which is not at issue in these cases) was originally the 49th Parallel, but was modified in 1908 to be the line of current demarcation without respect to its deviation from the 49th Parallel. The line of demarcation identified by the treaty parties in 1908 were the markers placed in the ground in 1857 to 1861 at locations then known to deviate from the 49th parallel when first placed. In western Whatcom County where all acts occurred, this deviation is approximately 700 feet. However, it diminishes to zero to the east, approximately half-way across the state. The State of Washington seeks to assert criminal jurisdiction over this portion of land which is north of the State's federally and constitutionally defined border in western Whatcom County, but south of the marked international treaty boundary.

On February 21, 2002, the Washington State Supreme Court issued a decision which modified the definition of Washington's northern boundary and expanded the size of the State to incorporate this additional portion of land. The Washington Supreme Court (and the trial court below) explicitly recognized the clear written definition of the State's border as the 49th Parallel. Both courts found as a matter of fact that there is a physical difference on the ground between the 49th Parallel and the International Boundary. Nonetheless, the Supreme Court ruled that "the political and conceptual location of the international

and state borders was the same" and that "legally the two boundaries are coextensive." Appendix at 31; *see also*, appendix at 45, 48, 50.

This Petition follows for violation of Petitioners' rights of under Articles IV, VI and Amendment VI of the United States Constitution, Article XXIV of the Washington State Constitution and pursuant to New Jersey v. New York, 523 U.S. 767, 811, 118 S.Ct. 1726, 140 L. Ed. 2d 993 (1998) and Washington v. Oregon, 211 U.S. 127, 135, 29 S.Ct. 47, 49, 53 L.Ed. 118 (1908).

2. Statement of Federal Questions

The federal questions at issue in this Petition have been raised at all stages of proceedings below. Federal questions were raised with the trial court in Petitioners' *Motion to Dismiss for Lack of Subject Matter Jurisdiction and Because Such Prosecutions Violate the Sixth Amendment to the United States Constitution.* Federal questions were further raised and amplified in Petitioners' subsequent pleadings before the trial court and the Washington Supreme Court in the following pleadings: *Defendants' Reply Brief and Second Memorandum in Support of Motion to Dismiss; Defendants' Memorandum Regarding 1908 Treaty; Petitioners' Brief; Reply Brief of Petitioner.* The trial court's ruling which was appealed to the Washington Supreme Court denied Petitioner's request for relief from the federal questions presented.

The Washington Supreme Court and the dissent noted the federal questions inherent in this Petition in the written opinion. Appendix at 17-25, 29-30, 33. Petitioner's have consistently alleged that Washington courts do not have jurisdiction to modify the clear language of Congress. For example, the majority stated

"the particular question here, the location of a state boundary, is ultimately a preferred question of congressional intent." Id. at 17.

ARGUMENT

1. Boundary History

On November 11, 1889, U.S. President Benjamin Harrison admitted the State of Washington into the Union by Presidential Proclamation. Appendix at 81. The federal "Enabling Act" and Article XXIV of the Washington Constitution set the State's northern border at the 49th Parallel of north latitude. Appendix at 84. No formal monumented boundary then existed between the United States and Great Britain (now Canada). The Oregon Treaty of 1846 between the United States and Great Britain had previously established the 49th Parallel as the International Boundary between the two countries. Appendix at 111.

From 1857 to 1861, the United States and Great Britain jointly surveyed the area along the International Boundary. This survey established the first monuments in the ground, which eventually became the International Boundary by treaty in 1908. Appendix at 56. The surveyors had placed these monuments at locations known to not be located on the actual 49th Parallel. *See,* International Boundary Commission - Joint Report Upon The Survey And Demarcation Of The Boundary Between The United States And Canada From The Gulf Of Georgia To The North Westernmost Point Of Lake Of The Woods, U.S. GPO (1937) pp. 13, 25, 199, 201, 204 (hereinafter "Int'l Boundary Comm'n Rpt."). For example, Commissioner Hawkins, the British representative for this survey, stated the issue in a letter dated April 12, 1861 as follows:

I stated that the Boundary so carefully and completely defined and marked by Captn. Haig and Lieut. Anderson in the past season, between the Similkameen and the western intersection of the Newhoialpitkw at Statapoosten would require revision. This necessity arises from the connections made between the various British and American points on the Boundary derived from the astronomical operations at the several stations showing great and unexpected discrepancies in the latitude of the points. The results of the astronomical operations by both Commissions seem to be in the highest degree satisfactory; the points on the 49th parallel derived from those results are not liable to errors which can be detected at the stations themselves; the country through which the connections have been made is of a generally favourable character; and the method of connection does not permit of errors at all approaching in magnitude the discrepancies found to exist. There seems to be no way of explaining these discrepancies except by attributing them principally to local causes affecting the astronomical observations similar to those vitiating the determinations at Schwelza alluded to in paragraph 16 of my despatch No. 9 dated 21st May, 1860; and which probably affect more or less every station between the sea and the Rocky Mountains. Two ways of dealing with this difficulty presented themselves either to connect the adjacent stations by curves representing and having the

properties of the 49th parallel (there being no apparent reason for preferring or rejecting the determination of any one of the stations) which might have been the preferable method had there been grounds for suspecting the accuracy of the manner of making the connections, and which will be followed in revising the line between Semiahmoo and Sumass; or to adopt a mean parallel from the continuation of the several astronomical results and their connections, from that mean to correct the result obtained at each station and to run, and mark a parallel coinciding with those corrections. There are two British and three U.S. determinations of latitude in the space of nearly 65 miles, from between the Similkameen River and Osoyoos Lake, to Statapoosten, the greatest discrepancy is between the British station at Osoyoos and the U. S. station at Statapoosten, which differ about 860 ft; and none of the stations agree within less than about 180 ft which is the difference between Statapoosten and the British station at Inshwointum. In this case, the first plan would certainly not produce a *parallel* of latitude and thus would knowingly fail to fulfil the provisions of the Treaty-The second plan would result in a parallel which would probably be the nearest approach to an accurate determination of the 49th parallel that any but a very elaborate and extended course of observation could arrive at. Captn. Haig has written at length to Mr. Airy the Astronomer Royal on the subject of these unwelcome and

> very unexpected discrepancies and on the method of dealing with them. At a meeting at this place on the 4th of March, attended by Lieut. Parke, the U. S. Chief Astronomer, in the absence of the Commissioner, Mr. J. S. Harris, one of the U.S. assistance Astronomers, Captn. Haig and myself-the above question, and the plan of this year's operations were discussed; and it was agreed that a mean parallel should be adopted, and a new line run and marked from the Similkameen to Statapoosten-This Lieut.: Parke has undertaken to do, on the part of the U.S. Commission, on satisfying himself as to the existence and amount of the alleged discrepancies.

Id. at 213. Thus, the Commissioners for the treaty parties agreed upon compromises and modifications in order to accomplish their task of placing markers on the ground at locations known and agreed upon to be off of the 49th parallel of north latitude.

Because of these original errors, a physical difference has always existed between the 49th Parallel and the monuments marked on the ground. For example, the trial court found that:

> Certainly the defendants have clearly shown that the geodetic forty-ninth parallel is located several hundred feet south of the international boundary. A good deal of research, production of maps and commentary and testimony **proved this fact conclusively**. There is also no doubt that from the early reports of the commissioners and their attempts to construct a line on the ground to represent the "true astronomic forty-ninth parallel of north

> latitude" there was general awareness that the marked boundary was not being created on the true 49th parallel of north latitude. (Exhibit 120, page 85).

Appendix at 48-9 (emphasis added) (citing Northwest Boundary Commission Rpt., U.S. Coast & Geodetic Survey-U.S. Geological Survey (1901)); *see* International Boundary Commission Rpt. pp. 199-201.[2]

This error was correctable, even in 1857. *See e.g.* Id. at 25, 201. In fact, Commissioner Hawkins actually suggested in a letter dated May 10, 1869 that the parties correct the known error:

> The above remarks lead me to request your Lordship's further consideration of the necessity of entering into a convention with the United States, supplementary to the Treaty of the 15th of June, 1846, declaratory of the Boundary marked out by joint Commission being *the* Boundary of the Treaty **notwithstanding any possible departures from the actual line of the Forty-ninth Parallel**. The more than probability that such departures unavoidably exist is alluded to above, and in the previous reports; and the necessity for a supplementary Convention suggested by me in the concluding paragraph of my letter No: 28 of the 4th August 1862, and recognized by Her Majesty's Government in a letter from the Treasury to Mr. Hammond dated September 1862.

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[2] As noted *infra* at 15-6, the trial court's factual findings were not challenged by the State and are therefore verities on appeal.

Int'l Boundary Comm'n Rpt. at 204 (emphasis added).

There is no factual dispute in this case that the original International Boundary survey placed ground markers at locations known to not be located on the actual 49th Parallel.[3] A parallel of latitude is essentially a perfect circle around the earth which is a mathematical equation defined by its angle off of the equator. It is an infinitesimally small line which runs east-west and divides the Earth on a north-south basis into sections which are determined based on their mathematical relationship to the equator. Prior to the late 20th Century, with the establishment of Global Positioning Systems and other such models based on the center of the Earth, the method for determination of a parallel was by astronomic means. Essentially, sightings were made of stars in known locations, which

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[3] Dr. John D. Bossler testified extensively on behalf of Petitioners regarding the historical development of surveys for parallels of latitude. His testimony was unrebutted and he was admitted as an expert witness without objection. Dr. Bossler is a professional consultant in the field of geographic information systems, geodesy and remote sensing. He is a professor emeritus at Ohio State University (OSU), where he was Director of the Center for Mapping from 1986 to 1997. He was director of the NASA Commercial Space Center, formerly Center for Commercial Development of Space, in Real-Time Satellite Mapping. He was a full professor of Geodetic Science and Surveying in the Department of Civil and Environment Engineering and Geodetic Science at OSU. From 1983 to 1986 he was the Director of the Coast and Geodetic Survey under the National Oceanic and Atmospheric Administration (NOAA) as a Rear Admiral (the same federal agency that produced the surveys at reports noted in this Petition). From 1980 to 1983 Dr. Bossler was Director of the National Geodetic Survey in NOAA. From 1959 to 1980 he was an engineer and scientist in NOAA.

were then used to calculate the location on Earth. By definition, then, a parallel must be a curve in order to be a perfect circle around the earth.

There have been relatively few advances in astronomic science since 1889. There were no advances in scientific knowledge regarding geodetic sciences from 1889 to 1901. The scientific basis for understanding the difference between the 49th parallel and the International Boundary in 1901 was developed over a period of time beginning well before 1889, starting at least in 1854.

The placement of markers in the ground at locations known to be off the 49th parallel occurred by agreement of the treaty parties. For example, there was an 1869 agreement between the Commissioners for the United States and Great Britain that the monumented boundary would not be on the 49th parallel because they were using averages and straight lines:

> It is agreed by the Commissioners that, between any two successive defined points, marked on the ground shown on the maps, and set forth in the accompanying lists, the line of Boundary above described is to be understood to be a right or straight line; and that this rule is to apply throughout the entire Boundary without regard to the distances between the consecutive points or to the course of the parallel in such intervals.

Id. This Petition does not, therefore, raise any factual issues. Rather, it challenges the Washington Supreme Court's application of known facts to clear Congressional terms for admission of the State into the Union which conflicts with the United States Constitution and this Court's prior holdings.

The trial court ruled that the scientific means to understand the physical difference between the 49th Parallel and the monuments in the ground existed before statehood. It stated:

> By this time everyone knew full well that the marks on the ground were not where geographers considered the true forty-ninth parallel to be. In fact, the very maps made by the commissioners show the forty-ninth parallel as distinct from the international border. (Exhibits 3A, 3B, 3C, 3D). The official report of the same Commission (Exhibit 61) was made in accordance with the provisions of the 1908 treaty. Beginning on page 144 of that report descriptions are made of the geographic locations of the monuments along the international border. Those descriptions indicate that the monuments are not located on the forty-ninth parallel, geographically-speaking. In fact, throughout the report, the latest (1927) North American Datum was used "to publish the geodetic locations of the boundary marks." (Introduction, p. XV).

Appendix at 51 (citing appendix at 139-141 and Int'l Boundary Comm'n Rpt.). This knowledge developed over time, beginning as early as 1854. None of the trial court's factual findings were challenged by the State on appeal. Under Washington law, therefore, all unchallenged findings of fact are verities on appeal. State v. Rodgers, ___ Wash. 2d ___; 43 P.3d 1 (2002); State v. Horrace, 144 Wash. 2d 386, 28 P.3d 753 (2001); City of Seattle v. Muldrew, 69 Wash. 2d 877, 878, 420 P.2d 702 (1966); State v. Stenson, 132 Wash. 2d 668, 697,

940 P.2d 1239 (1997); State v. Hill, 123 Wash. 2d 641, 644, 647, 870 P.2d 313 (1994).

All 200 exhibits were admitted into evidence in the trial court by stipulation of the parties. Numerous maps from the time show the scientific basis for understanding the difference between the 49th Parallel and the monuments in the ground. *See e.g.* appendix at 137-141. There was uncontroverted testimony that the two lines on the map at appendix page 138 were a deliberate cartographic attempt to show, at least in the vicinity of the area where they had information from their surveys, that the 49th Parallel was not identical to the International Boundary.[4] Maps that preceded the 1908 treaty show that the federal and state governments knew and understood the difference between the 49th Parallel and the monumented boundary. For example the trial court cited the maps at appendix 139-141 as a basis for such understanding. The scientific means to correct for the difference between the lines was not new in 1908. There had been no major changes in that field since well before statehood in 1889. Indeed, to this day, the only improvement in this field has come from enhanced start charts, not survey methods on earth.

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[4] Dr. Nicholas Chrisman testified extensively on behalf of Petitioner's regarding the historical development of cartography. His testimony was unrebutted and he was admitted as an expert witness without objection. Dr. Chrisman is an Associate Professor of Cartography at the University of Washington whose research interests are in Geographic Information Systems (GIS) in which he has published more than 80 titles. Dr. Chrisman has a broad professional experience in cartography including numerous publications and extensive service in his field.

2. Washington's First Constitution and Treaty of 1908

In June 1878, Edward Eldridge rode from Bellingham to Walla Walla to help write the first constitution for the proposed State of Washington. On July 10, 1878, the Walla Walla Convention adopted a metes and bounds definition that relied on the recently surveyed international boundary to set Washington's northern border: ". . . thence north, along said meridian to the boundary line of the British Possessions; thence westerly along the line of the British Possessions to a point one marine league west from the mouth of the middle channel of the Straits of Juan de Fuca." *Washington's First Constitution, 1878 and Proceedings of the Convention*, 10 Wash. Hist. Q. 59, (Meany & Condon eds.) at 63. The Walla Walla Convention chose the new international boundary, not the traditional 49th Parallel, to mark the State's northern edge.[5]

Twelve years later, in July 1889, 61-year-old Edward Eldridge rode again to attend a constitutional convention, this time in Olympia. On August 7, 1889, the Boundary Committee recommended that Washington's northern border be "along said 49th Parallel of North latitude to the middle of the channel which separates Vancouver's Island from the continent." (*Journal of the Washington State Constitutional*

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[5] Dean Condon's appraisal of the Walla Walla convention is of particular relevance to this appeal. "Although the Washington Constitution, framed and ratified in 1878, had no real life, it is still an important document in the history of the commonwealth. It reflects better than any other form of literature the political, social, and economic thought of the pioneer citizens of that time. In a democracy, such document is also of great value when submitted in comparative study with the Constitution adopted later and now in force." *Washington's First Constitution* at 5.

Convention, 1889 (Rosenow ed. 1962) at 276). When the full convention held floor debate on the boundary, Eldridge rose to speak. "Mr. Eldridge moved to substitute the description used in the Walla Walla Constitution [1878]. Lost." (*Journal of the Washington State Constitutional Convention, 1889* at 334).

With his motion, Eldridge presented a choice to the framers of the Washington Constitution: define Washington's northern boundary as the "boundary line of the British Possessions," as in the 1878 Constitution, or as the 49th Parallel of North Latitude". The framers, like Congress, chose the 49th Parallel. On November 11, 1889, Present Harrison approved the Washington Constitution as written "and the admission of said state into the Union is now complete." Neither Congress nor the President insisted on the international boundary as Washington's northern border. As a consequence, Congress and the President accepted the definition of Washington's northern border, under State and federal law, as the 49th Parallel.

Because of the historical evidence, and the known difference between the 49th Parallel and the monuments on the ground, the United States government redefined the International Boundary to be the location of the monuments in the ground, without regard to whether they were on the 49th Parallel. This new definition, which recognized the difference between the 49th Parallel and the monumented boundary, was promulgated by treaty between Great Britain and the United States in 1908. Appendix at 56. A simple syllogism shows the change on which the Washington Supreme Court erred: (1) the International Boundary was first defined as the "49th parallel of

north latitude." Article VII of the Treaty of 1908 defines the International Boundary as "the line so laid down shall be taken and deemed to be the international boundary" (without regard to its deviation from the 49th Parallel); (3) number 2 is not the same as number 1, therefore, the definition of the International Boundary was changed in 1908.

The reasons the 1908 treaty changed the definition of the International Boundary are clear. As noted previously, the two countries realized that "no protocol appears whereby the results of the surveys were accepted as declaratory of the true boundary between the two jurisdictions, nor was any action taken in the way of ratification by the treaty-making powers whereby the results reached as above became a part of existing treaties." Northwest Boundary Commission Report, U.S. Coast & Geodetic Survey, U.S. Geological Survey (1901) at 28. The instructions given to the survey teams in 1901 identify the intentions of the two countries regarding the need to enter into a new treaty in order to redefine the boundary as marked:

> The British Government, under these circumstances, proposes "that joint measures may be taken at an early date for the examination of the whole of the 49th parallel west of the Rocky Mountains, with a view to the better demarcation of this boundary", especially at three indicated points.
>
> In response this Government takes the position "that the more effective demarcation of the Northwest Boundary by the joint action of the two Governments will require an express convention to that end;' and the purpose is announced to make an immediate

> reconnaissance of the region through which the boundary parallel runs, "to the end that the information so to be procured may be made use of for the purposes of the suggested convention, or to aid toward the conclusion of an intervening partial delimitation as a modus vivendi.
>
> This brief summary will indicate what is expected of the reconnaissance parties now to be sent to the Northwest frontier. It is desirable to know: -
>
> 1. What parts of the line surveyed and marked between 1857 and 1860 are now recognizable.
> 2. **Whether the recognizable parts correspond to the true treaty boundary, to wit, the 49th parallel of north latitude; and if not, where and to what extent they diverge therefrom.**
> 3. What parts of the line were not surveyed and effectively marked by the surveys of 1856-1860, and what points thereof should now be marked to constitute a certain and effective location of the 49th parallel through its course from the Rocky Mountains to the Pacific Ocean.

Id at 29; *see also* Int'l Boundary Comm'n Rpt. at 194-217. Thus, the United States and great Britain agreed in 1901 that: (1) there was no formal promulgation which recognized the markers placed in the ground during the 1857-61 survey; (2) there was a known deviation from these survey markers and the 49th parallel; and (3) there was a mutual need to correct these first two issues.

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These cases result from the fact that the United States changed the definition of its border, but Washington State did not. Now, nearly 100 years later, the Washington Supreme Court has issued an opinion to "correct" this political issue. The Washington Court has done by legal fiat what the two countries accomplished by negotiation and treaty. As Justice Sanders noted in his dissent, *"Fiat justitia et ruant coeli"* (Let justice be done, though the heavens fall). Appendix at 41. A state court cannot modify the definition of its borders, even with the best of intentions. It must, as the United States did, proceed through Congress.

3. A State Supreme Court is Without Authority to Judicially Modify State Borders

The Washington State Supreme Court's unilateral modification and expansion of the territorial description of the State violates (1) Article IV § 3 and Article VI of the United States Constitution; (2) the Congressional conditions for admission of Washington as a State; and (3) President Benjamin Harrison's proclamation admitting Washington as a State.

Article IV § 3 of the U.S. Constitution is clear and unambiguous; the exclusive power for creation of states resides with Congress. Alabama v. Texas, 347 U.S. 272, 74 S.Ct. 481 (1954). The constitutional power of Congress under this clause is without limitation, and neither the courts nor executive agencies may proceed to the contrary. United States v. California, 332 U.S. 19 (1947); United States v. City and County of San Francisco, 310 U.S. 16, S.Ct. 749, 84 L.Ed. 1050 (1940); *see also,* Alabama v. Texas, 347 U.S. 272. "[C]ourts have no power to substitute their own notions of an

'equitable apportionment' for the apportionment chosen by Congress" Arizona v. California, 373 U.S. 546, 565-566, 83 S.Ct. 1468, 1480-1481 (1963). As Congress had determined the border between Washington and Oregon, "**[t]he courts have no power to change the boundary thus prescribed** ..." Washington v. Oregon, 211 U.S. 127, 135, 29 S.Ct. 47, 49 (1908) (emphasis added). This Petition asks this Court the very same question again.

Until the year 2002, the northern boundary of Washington has always been described as the 49th Parallel. *See,* Washington v. Oregon, ; Article XXIV, Wa. Const., *supra.* It was first created as Washington Territory from "all that portion of Oregon Territory lying and being south of the forty-ninth degree of north latitude." Appendix at 116-7. When Congress decided that Washington could become a state, it permitted its entry "as at present described". Appendix at 84. Then on November 11, 1889, President Harrison issued a proclamation declaring Washington duly admitted into the Union. Appendix at 81. It is the "supreme Law of the Land" then, under Article VI of the United States Constitution, that the northern border of Washington State is the 49th parallel.

Now, in the year 2002, the Washington Supreme Court has ruled that the State's northern border is "coextensive" with the International Boundary , rather than along the 49th Parallel as written. Appendix at 31. The Washington Court found that the "political and conceptual" location of the State border was the same as the International Boundary, despite the clear difference in legal description of each and the different location on the ground between the International Boundary and the 49th Parallel. Id.

United States Constitution Article IV, § 3, gives Congress, not the Washington Supreme Court, the power to create new states and to establish the boundaries of the states. Texas v. Louisiana, 410 U.S. 702, 707, 93 S.Ct. 1215, 35 L.Ed.2d 646 (1973). This issue then is one of Congressional intent, not State law Id.; *see also* Illinois v. Kentucky, 500 U.S. 380, 387, 111 S.Ct. 1877, 114 L.Ed.2d 420 (1991); Washington v. Oregon; Louisiana v. Mississippi, 202 U.S. 1, 46- 47, 26 S.Ct. 408, 50 L.Ed. 913 (1906).

4. Practicality And Convenience Are Insufficient Grounds To Redefine Constitutional Boundary

The Washington Supreme Court erred in its interpretation of the "Enabling Act", the federal statute defining the boundaries of the State of Washington pursuant to Article IV § 3 of the United States Constitution, and in conflict with New Jersey v. New York, 523 U.S. 767, 118 S.Ct. 1726 (1998). The Congressional terms for admission of Washington into the Union are clear and unambiguous.

The term 49th Parallel identifies a specific location on Earth. It is, by definition, a fixed place which does not move, like other geographic features such as a river or mountain.[6] An international boundary on the other hand, is subject to modification at any time. The

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[6] This Court has on numerous occasions recognized the historic significance of natural river boundaries. "In case of doubt, every territory terminating on a river is presumed to have no other boundary than the river itself because nothing is more natural than to take a river for a boundary ..." Nebraska v. Iowa, 143 U.S. 359, 366 12 S.Ct. 396, 398 (1892). So too is a parallel of latitude. *See also*, Ohio v. Kentucky, 444 U.S. 335, 338, 100 S.CT. 588, 590 (1980); Handly's Lessee v. Anthony, 5 Wheat 374, 379, 5 L.Ed. 113 (1820).

question has to be asked, what happens to the northern border of Washington State if the United States and Canada agreed to change the International Boundary again? As Justice Sanders noted in his dissent, the location of a line of latitude is one of the easiest means of geographic location: "This case is easier than pi. The 49th parallel can be located to the decimal. It is precise as logic. It is as pointed as the needle on a compass. If that term is ambiguous, the language of law is no more than sand shaped into castles at the arbitrary whim of he (or she) who wears the black gown" appendix at 43.

In New Jersey v. New York, this Court gave most of Ellis Island to New Jersey without regard to the common belief for well over 100 years that it was part of New York. The Court found that mistakes or absence of more determinative language was irrelevant. "It seems appropriate to repeat the suggestion ... that the parties endeavor with the consent of Congress to adjust their boundaries." Minnesota v. Wisconsin, 252 U.S. 273, 283 (1920). "We appreciate the difficulties of a boundary line that divides not just an island but some of the buildings on it, but these drawbacks are the price of New Jersey's success in litigating under a compact whose fair construction calls for a line so definite." New Jersey v. New York, 523 U.S. at 811. "A more convenient boundary line must therefore be 'a matter for arrangement and settlement between the States themselves, with the consent of Congress.'" Id. (quoting Indiana v. Kentucky, 136 U.S. 479, 508 (1890)).

Since the original compact used clear language to define the ownership of Ellis Island and its surrounding waters, the Court ruled that New Jersey had proprietary ownership over the land created by

additions to Ellis Island. The "utter silence" of the drafters of a boundary compact does not mean that there exists an ambiguity requiring interpretation. Id. at 784 (fn. 6).[7] Rather than look to legislative history, custom, and usage, the Court must rely on the words used. "The drafters' silence, then, can hardly be taken to convert the Island's name into a definitional Proteus for validating sovereignty claims." Id. at 783. Likewise, the clarity and scientific certainty of delineation of a border with a line of latitude can hardly be taken as a definitional Proteus for modification and expansion of the same by a State court.

Drawing boundary lines and interpreting compacts does not always lead to the simplest or most practical decision. This Court refused to adjust boundary lines "for reasons of practicality and convenience." Id. at 810; Compact Clause, United States Const. Art. I, § 10.

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[7] *See also*, Justice Sander dissent where he notes: "The majority makes a category mistake of galactic magnitude when it attributes ambiguity to "forty-ninth parallel" by reference to differing methods of determining where the 49th parallel lies on the ground. Properly understood, "the what" and "the where" are different. On the one hand, there exists the category of the things themselves, i.e., the latitudes or parallels of which the 49th obviously is a member. On the other hand, there exists the category of systems to measure where those things might be, i.e., the tools we use to locate latitudes or parallels. These two categories, however grammatically similar they may be, are distinct and should not be conflated. While we may use differing empirical procedures to ascertain the location of latitudes, some giving more precise results than others, those systems of measurement do not create ambiguity in meaning of the term "forty-ninth parallel" anymore than a child's mistake in performing addition renders the erroneous sum of one plus one "ambiguous." Appendix at 42.

"Unless the compact . . . is unconstitutional, no court may order relief inconsistent with its express terms," no matter what the equities of the circumstances might otherwise invite. Id.; *see also*, Arizona v. California, 373 U.S. 546, 565-566 (1955); Washington v. Oregon, 211 U.S. 127, 29 S.Ct. 47, (1908). Thus custom, assumption, and late 19th century history did not define the State's boundaries. Since the plain language of the compact was straightforward, the Court said, "we have no occasion to interpret the terms of the compact more broadly than the parties who signed it." Id.

This Court is again presented with a similar situation. It may seem odd that there could be a strip of federal land between Washington and the International Boundary, but that's what a plain reading of the Congressional Act requires. The description of Washington's boundaries ends at the 49th Parallel of north latitude. The fact that the State courts have asserted jurisdiction north of the description does not alter the controlling language used to create the State. The Constitution itself and the federal acts that promulgated it are not subject to judicial re-drafting. It is axiomatic that the description of Washington's borders did not include the words "International Boundary" or "co-extensive" or "same as;" words found in the Washington Court's decision. Appendix at 31. The Washington Supreme Court erred by blending the International Boundary with the 49th Parallel on "political" grounds. Id.

5. Federal Authority Over Boundary Lines

The land area in question is south of the International Boundary, and located within the United States. The federal government keeps title to land

unless it expressly grants it to another state or entity. Texas v. Louisiana, 410 U.S. 702, 713 (1973); Scott v. Lattig, 227 U.S. 229, 242-44; 33 S.Ct. 242, 57 L.Ed. 490 (1913); *see also* Mission Rock Co. v. United States, 189 U.S. 391, 23 S.Ct. 606, 47 L.Ed. 865 (1903). Unless conveyed specifically, title remains in the United States. Id. The United States does not have power to reestablish Washington State's boundary lines. California v. Nevada, 447 U.S. 125, 131 (1980); New Jersey v. New York, 523 U.S. 767 (1998); Idaho v. United States, 533 U.S. 262, 279, 121 S.Ct. 2135, 2146 (2001). The United States is responsible for the division and creation of its territorial land holdings. United States v. Midwest Oil Co., 236 U.S. 459, 474, 35 S.Ct. 309, 313, 59 L.Ed. 673 (1915).

Because this land was not incorporated into Washington, it remains under federal jurisdiction for exclusive administration by Congress. Article 4, § 3, cl. 2, United States Const.; Alabama v. Texas, 347 U.S. 272, 74 S.Ct. 481 (1954). Washington State courts cannot decide how that trust should be administered; it is a matter for Congress' sole determination. United States v. California, 332 U.S. 19, 27, 67 S.Ct. 1658, 1663. The constitutional power of Congress under Article IV, s 3, Cl. 2 is without limitation. Id.; United States v. City and County of San Francisco, 310 U.S. 16, 29, 30, 60 S.Ct. 749, 756, 757, 84 L.Ed. 1050 (1940); Alabama v. Texas. "Thus neither the courts nor the executive agencies, could proceed contrary to an Act of Congress in this congressional area of national power." United States v. California, 332 U.S. at 27, 67 S.Ct. at 1163.

6. Violation of Amendment VI, U.S. Constitution

The Washington Supreme Court violated Petitioner's rights under Amendment VI of the United States Constitution to trial by jury of the state and district where the crime was alleged to have been committed. The Framers of the United States Constitution thought it so important that a person be tried where the crime was committed that they put this in the Constitution in two places.

> One of the grievances listed by the draftsmen of the Declaration of Independence was that the King had assented to legislation 'For transporting us beyond Seas to be tried for pretended offenses.' But regardless of whether the drafters of the Constitution believed that a defendant ordinarily ought to face trial at home, they chose to subordinate that policy to another and sometimes competing policy. [Here the Court quoted from Art. III, § 2, and the Sixth Amendment of the constitution.] It would appear then that where a colonist had gone to England and while there engaged in criminal conduct, even our forefathers would not have considered it unfair to transport him there for trial.

United States v. Aronoff, 463 F.Supp. 454, 457 (D.C.N.Y.) (1978). There is a constitutional right to be tried in the district in which the crime was committed. Unites States v. White, C.A.5th, 1980, 611 F.2d 531, 534. The venue of a crime may be fixed at any place where the acts occurred. Armour Packing Co. v. United States, 209 U.S. 56, 73-77, 28 S.Ct. 428, 432-3, 52 (1908); Salinger v. Loisel, 265 U.S. 224, 232-5, 44 S.Ct. 519, 522-3 (1924); Hyde v. Shine, 199 U.S. 62, 78 (1905).

CONCLUSION

For over 100 years, the Federal and State governments have known the marked International Boundary is not on the 49th Parallel. In 1908, the Federal government recognized this by treaty and added all land north of the parallel and south of the boundary into the United States. Washington has not made a similar adjustment. Because Congress alone can make this change, the Washington Supreme Court erroneously asserted jurisdiction over federal land.

The Washington State Supreme Court cannot amend the definition of the State's boundaries for matters of practicality and convenience. The State cannot exercise criminal jurisdiction for acts that occur north of the 49th Parallel. The Washington Supreme Court cannot create its own subject matter jurisdiction, nor can it modify the express terms of Congress or the United States Constitution. The unambiguous terms of the State Constitution and the federal acts that created the State's borders end the State's reach at the 49th Parallel. The State therefore cannot prosecute defendants for acts that occurred entirely outside the State of Washington.

Petitioners Helen Norman, Kevin Belen, and Laura Stradwick respectfully request this Court to grant the appropriate relief.

Respectfully Submitted:

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APPENDICES

APPENDICES

Washington State Supreme Court Decision 145 Wash. 2d 578, 40 P.3d 1161 (2002) 1a

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Treaty Between the United States of America and the United Kingdom concerning the Boundary Between the United States and the Dominion of Canada from the Atlantic Ocean to the Pacific Ocean ("Treaty of 1908") ..... 56 a

Presidential Proclamation for admission of Washington State, 26 Stat. At L. 1552 (November 11, 1889) ..... 81 a

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1865 Map, U.S. Government Land Office, *Map of Public Surveys in the Territory of Washington* . .137 a

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1908 Treaty Map, No. 1 – Point Roberts, Washington ..... 139 a

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Supreme Court of Washington,
En Banc.

STATE of Washington, Respondent,
v.
Helen NORMAN, Kevin Belen, and Laura Stradwick,
Petitioners.

No. 69417-6.

Argued Sept. 11, 2001.
Decided Feb. 21, 2002.

Defendants, who were arrested north of the 49th parallel but south of the international border, filed motions to dismiss for lack of subject matter jurisdiction. The Superior court, Whatcom County, David A. Nichols, J., denied the motions. Defendants appealed. The Supreme Court, Madsen, J., held that state's northern border was coextensive with the international boundary between the United States and Canada, rather than along the 49th parallel, and thus defendants apprehended north of the 49th parallel and south of Canadian border were subject to jurisdiction within the state.

Affirmed.

Sanders, J., dissented and filed a separate opinion.

Washington State's northern border was coextensive with the international boundary between the United States and Canada, rather than along the 49th parallel, and thus defendants apprehended north of the 49th parallel and south of Canadian border were subject to jurisdiction within the state; the state's 1889 Enabling Act, treaties, and enactments relating to the international border, and the admission of the state in the 19th century, indicated that Congress intended the state's border to be the same as the international boundary between the United States and the British possessions to the north.

**1161*580 Christine Gregoire, Atty. Gen., Jeffrey Todd Even, Asst., Olympia, amicus curiae on behalf of Atty. Gen.

Whatcom County Public Defenders Assoc., Jon Christopher Komorowski, Eric Michael Weight, Brett & Daugert, Philip James Buri, Bellingham, for petitioners.

David McEachran, Whatcom County Prosecutor, David M. Grant, Deputy, Bellingham, for respondent.

MADSEN, J.

The defendants in these consolidated cases maintain that the State lacks jurisdiction to prosecute them for alleged crimes committed north of the 49th parallel, as located by present day geographers and surveyors, but south of the international boundary between **1162 the United States and Canada. Our state constitution provides that Washington State's northern boundary in the relevant area is "west along said forty-ninth parallel of north latitude." Const. art. XXIV, § 1. At the time the United States Canada border was originally surveyed, prior to Washington's admission into the Union as a state, the surveyors used an astronomic method of locating the 49th parallel that failed to account for local gravitational pulls. For this and other reasons, the international border does not lie on the 49th parallel as currently located.

We hold that this state's northern boundary is coextensive with the international boundary as marked, and accordingly affirm the trial court's denial of the defendants' motion to dismiss for want of subject matter jurisdiction.

*581 Facts

In 1996, United States Customs officials at border crossings in Whatcom County searched each of the defendants, Helen J. Norman, Kevin C. Belen, and Laura Lee Stradwick. The site of each search is north of the 49th parallel as presently recognized, but south of the United States Canada border. The searches of Norman and Stradwick led to state charges against them of being in possession of controlled substances, while the search of Belen led to his being charged with possession of stolen property. The defendants' cases were consolidated in Whatcom County Superior Court for purposes of a defense motion to dismiss for lack of subject matter jurisdiction. The defendants argued that the alleged crimes were committed north of the Washington border because they were committed north of the 49th parallel. The trial court held a pretrial hearing on the motion (continuing it as necessary) and considered expert testimony and numerous exhibits pertaining to the location of Washington's border north of Whatcom County. The court denied the motion to dismiss, reasoning that although present day geographers place the 49th parallel at a location different from that of the marked international boundary between the United States and Canada, the political and conceptual location of the international boundary is the 49th parallel and the state constitution defines the state's boundary to follow the international boundary.

The defendants sought discretionary review of the trial court's order and this court granted

interlocutory review. We consider the history of the United States Canada international boundary and the history of Washington's admission into the Union and its boundary in order to decide the issue presented.

The territory west of the Rocky Mountains and north of the 42nd parallel (California's northern border) was jointly occupied by the United States and Great Britain for a period of time prior to 1846, when the conflicting claims ***582** were resolved by The Oregon Treaty[-]Treaty Establishing the Boundary in the Territory on the Northwest Coast of America Lying Westward of the Rocky Mountains (hereafter the Oregon Treaty), *reprinted in* Dep't of State, Int'l Boundary Comm'n, *Joint Report upon the Survey and Demarcation of the Boundary between the United States and Canada* 191-92 (1937) (hereafter *Report of the Comm'n*). The Oregon Treaty provided that the boundary between the two nations "shall be continued westward along the said forty-ninth parallel of north latitude to the middle of the channel which separates the continent from Vancouver's Island." Oregon Treaty, *reprinted in Report of the Comm'n* at 191. Shortly thereafter, in 1848, Congress created the Oregon Territory, which described the territory as all the United States territory west of the summit of the Rocky Mountains and north of the 42nd parallel. 9 Stat. ch. 177, § 1, at 323 (1848). Then, in 1853, Congress created the Washington Territory from part of the Oregon Territory. Section 1 of the Organic Act described the northern boundary of the new territory when it defined the Washington Territory, in part, as "that portion of Oregon Territory lying and being south of the forty-

ninth degree of north latitude." 10 Stat. ch. 90, at 172 (1853). In 1859, the Oregon Enabling Act was passed, setting the northernmost boundary of Oregon along the middle of the Columbia River to the point where it intersects the 46th parallel and then easterly to the Snake River. 11 Stat. ch. 33, § 5, at 384(1859). **1163 The act further provided that the "residue of the Territory of Oregon shall be, and is hereby, incorporated into, and made part of the Territory of Washington." *Id.*

In 1856, Congress enacted legislation for the purpose of carrying out a survey of the border as established by the 1846 Oregon Treaty. Congress directed that the "demarcation of that part of the said line of boundary which forms the boundary line between Washington Territory and the British possessions" be located. 11 Stat. ch. 87, § 4, at 42 (1856). At the time, the Washington Territory extended eastward to the summit of the Rocky Mountains. The *583 survey was carried out between 1858 and 1862 (though some materials in the record say 1857-61). *Report of the Comm'n* at 194-97. The method used is described:

> In the absence of any previous geodetic surveys in the country traversed by this section of the boundary, astronomic observations for latitude had to be made in order to determine the parallel of forty-nine degrees. Such observations were made at selected stations within easily measurable distances of the parallel. The

> observations were made with great care and a high degree of precision was attained.... After the latitude of the station had been determined, a point on the parallel was established by measuring the required distance north or south, as the case might be, from the station to the parallel.
>
> The boundary was then traced along the parallel from the established point by the method of offsets from the tangent to the parallel, the tangent being determined by means of astronomic observations from azimuth.

Report of the Comm'n at 210-11.

Even at the time, the surveyors recognized that the line marked was not always on the 49th parallel. For example, the English Commissioner reported that survey errors were discovered as great as 860 feet and none less than 180 feet on the boundary between Similkameen to the Kettle River. These errors were discovered when attempts were made to link United States and British points on the boundary, and were resolved by running a "mean parallel." *Id.* at 213 (quoting letter from Comm'r Hawkins dated Apr. 12, 1861). The errors were attributed to "local causes affecting the astronomical observations" and were apparently due to "local station deflection of the plumb line." *Id.* at 213 & n. 3 (including footnote in letter). The attribution was apt. As experts for both parties agreed, and as is universally recognized, local land

masses can create variations in gravitational pulls, which cause deflections of plumb lines used in astronomical observations to establish lines of latitude.

Another cause was recognized for variation from the astronomic 49th parallel. Once points on the boundary were *584 marked, the boundary between the marks was agreed to be a straight line. *Report of the Comm'n* at 201 (quoting letter from Comm'r Hawkins dated May 7, 1869) (ex. 61). Since a line of latitude by definition is a curved line, this use of connecting straight lines also meant the marked boundary was not truly on the astronomic 49th parallel.

The survey commission prepared a series of seven maps, dated May 7, 1869, showing the location of the original boundary markers. The United States and Great Britain adopted this set of maps in an 1870 declaration stating that

> it appearing that they do *correctly indicate* the said Boundary from the point where the Boundary laid down in Treaties and Conventions prior to June 15th, 1846, terminates *Westward on the 49th Parallel of North Latitude to the Eastern shore of the Gulf of Georgia* [now Boundary Bay], which Boundary has been defined by the Commissioners *by marks upon the ground;*
> The Undersigned ... hereby declare that the said maps ... are approved, agreed to, and adopted by both Governments.

1870 Declaration,[1] *reprinted in Report of Comm'n* at 197-98 (emphasis added). Thus, ****1164** despite the known irregularities,[2] in the 1870 Declaration the United States and Great Britain recognized the boundary as marked on the ground as the international boundary along the 49th parallel.

On February 22, 1889, Congress passed the Enabling Act authorizing Washington's entry into the Union as a state. 25 Stat. ch. 180, at 676 (1889). Unlike the cases involving some other enabling acts, ours did not contain a metes and bounds description of the area that would form the new state of Washington. Instead, the Enabling Act said:

> ***585** [T]he inhabitants of all that part of the area of the United States *now constituting the Territories* of Dakota, Montana, and Washington, *as at present described,* may become the States of North Dakota, South

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[1] The full title is "Declaration Approving and Adopting the Maps Prepared by the Joint Commission of the Northwest Boundary for Surveying and Marking the Boundaries Between the British Possessions and the United States Along the 49th Parallel of North Latitude, Under the First Article of the Treaty of 15th June, 1846."

[2] The defendants quote the trial court's memorandum for the proposition that errors in locating the 49th parallel were correctable in 1857. Br. of Pet'rs, at 5-6. The quoted material relates to the 1908 Treaty (discussed below in the text) and maps related to it. *See* Mem. Decision at 6; exs. 3A, 3B, 3C, 3D. It does not relate to 1857 and the original survey.

> Dakota, Montana, and *Washington*, respectively, as hereinafter provided.
>
> *Id.* § 1 (emphasis added).

The people of the Washington Territory then set about proposing and adopting a state constitution. In 1889, delegates met and drafted a constitution. On July 15, 1889, Committee Chairman Comegys asked for authority for the Committee for Federal Relations, Boundaries and Immigration "to telegraph the Secretary of the Interior for information as to the definite boundaries of the territory of Washington." *The Journal of the Washington State Constitutional Convention, 1889*, at 96, 848 (Beverly Paulik Rosenow ed., 1999) (hereafter *Journal*). On August 7, 1889, the committee recommended a boundary description that, in relevant part, described the northern boundary as "thence West along said forty-ninth parallel of north

latitude." Ex. 115; *Journal* at 276.[3] The convention passed the committee's recommended description of the state boundary, with minor changes not relevant here, on August 19, 1889. Ex. 115. The voters ratified the state constitution. The boundary as adopted (and as subsequently modified by *586 the 33rd Amendment[4]) is found in article XXIV, section 1 of our state constitution.

On November 11, 1889, President Benjamin Harrison issued a proclamation admitting Washington into the Union as a state. 26 Stat. Proclamations at 10 (Nov. 11, 1889).

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[3] The analytical index to *The Journal of the Washington State Constitutional Convention, 1889*, at 848 (Beverly Paulik Rosenow ed., 1999), states that in the original version of the boundary description the northern border was described as along said "parallel of north latitude to the middle of the channel which separates Vancouver's island from the continent." The defendants say that at page 276 of an earlier edition (B. Rosenow ed., 1962), the boundary committee recommended this language as part of the state's boundary description. However, the portion of the 1999 edition where the journal itself is contained quotes the language recommended by the committee as being the same as stated in the text of this opinion. *Journal* at 276. This language appears correct. Exhibit 115 is a document printed by T.H. Cavanaugh, Public Printer, containing the committee's recommendation, in the language quoted in the text, and marked by a handwritten notation "as passed Aug 19th" and signed by the Chief Clerk. It appears the *Journal* language itself was corrected in the 1999 version of the *Journal*. The reason for the difference in language in the analytical index of the 1999 version of the *Journal* is not apparent.

[4] Amendment 33, 1957, added language to article XXIV, section 1 allowing state boundaries to be modified by appropriate interstate compacts approved by Congress.

In 1908, the United States and Great Britain entered another treaty concerning the international border. The 1908 treaty consists of separate articles. An introductory section states the desire of the nations for a "more complete definition and demarcation of the international boundary between the United States and the Dominion of Canada." Introduction, Treaty Between the United States of America and the United Kingdom Concerning the Boundary Between the United States and the Dominion of Canada from the Atlantic Ocean to the Pacific Ocean, April 11, 1908 (hereafter 1908 Treaty), *reprinted in Report of the Comm'n* at 1. Article VII addresses the boundary from the summit of the **1165 Rocky Mountains to the Gulf of Georgia, now Boundary Bay. It provides in part:

> Whereas, by concurrent action of the Government of the United States and the Government of Great Britain in 1902 and 1903, Commissioners were designated to act jointly for the purpose of renewing lost or damaged monuments and placing additional monuments where such were needed throughout the course of *the boundary along the forty-ninth parallel of north latitude,* from the summit of the Rocky Mountains westward to the eastern shore of the Gulf of Georgia, *as defined in Article I of the Treaty of June 15, 1846, between the United States and Great Britain* [the Oregon Treaty] and *as marked by monuments along its course* and laid down on a series of charts, seven in number, by a Joint Commission organized in 1858 for

> that purpose and composed of two Commissioners appointed one by each Government, which charts ... *were approved and adopted by the two Governments,* as appears from the declaration in writing ... [of] February 24, 1870 [the 1870 Declaration], ... *587 and it appearing that the remonumenting of *this line* by the Commissioners first above referred to is now approaching completion;
> [The parties agree that when the work is complete the "entire course of said boundary" shall be marked on charts and a report made of the work done];
> The line so laid down and defined shall be *taken and deemed to be the international boundary as defined and established by treaty provisions and the proceedings thereunder as aforesaid ....*

1908 Treaty, *reprinted in Report of the Comm'n* at 8 (emphasis added).

Each of the articles in the 1908 Treaty relating to a section of the border ends similarly to Article VII, i.e., each states the line so laid down shall be taken and deemed to be the international boundary as defined and established by previous treaties.

In addition to the historical events summarized above, the parties presented expert testimony at the pretrial hearing on the question of Washington's northern boundary. The State's witnesses generally described the difference between location of the 49th

parallel using astronomical observations and geodetic datums. The latter methodology, briefly stated and simplified, involves starting from a point believed to cause little or no deflection due to gravitational effect (because, for example, it is on a plain), locating that point, and then, using triangulation, creating a scheme of connected points used to locate degrees of latitude and longitude. Aside from the possibility that the initial point may have some deflection, the remaining points will be free of the effects of gravitational variance on the earth. More recently, global positioning systems have been used in surveying.

Additional testimony is discussed below where relevant to the analysis.

In 1996, the parties commissioned a firm to survey the location of the three Customs inspection facilities where the defendants were searched. The firm used global positioning and geodetic surveying methodology to locate the 49th *588 parallel near the sites. The results of the survey were that each of the sites was north of the discovered 49th parallel.

The trial court issued a memorandum decision explaining its denial of the defendants' motion to dismiss for want of subject matter jurisdiction. The court found no dispute that the international boundary as marked on the ground differs from the 49th parallel as currently determined. The court rejected the defendants' arguments that the 1908 Treaty altered the border definition in fact and concept, noting that the 1908 Treaty consistently refers to prior treaties,

specifically, in relevant part, the 1846 Oregon Treaty, and nowhere indicates that the 1846 treaty is superseded. The court concluded that the international border continues to be conceptually and politically defined by the United States and Great Britain as the 49th parallel. The court discussed the various surveying methods, but found that the 1846 and 1908 Treaties, which the court described as political actions in nature, affirmed the boundary as the 49th parallel despite known anomalies in the original survey and the development of geodetic systems by the time of **1166 the remonumenting in the early 1900's. The court then reasoned that the intent of the drafters of the Washington State Constitution was to follow the language contained in the 1846 Treaty of Oregon defining the international boundary as the 49th parallel, and to define Washington's boundary in the same way.

Analysis

The defendants argue the State lacks jurisdiction to prosecute them for alleged crimes committed north of the 49th parallel as currently determined and south of the international boundary. They also maintain that prosecution violates their rights under the Sixth Amendment to the United States Constitution, which states that a defendant has a right to trial by a jury "of the state and district wherein the crime shall have been committed."

[1][2][3] RCW 9A.04.030 defines state criminal jurisdiction and, in relevant part, states that there is jurisdiction when ***589** "[a] person ... commits in the state any crime, in whole or in part." RCW 9A.04.030(1). "Proof of jurisdiction beyond a reasonable doubt is an integral component of the State's burden in every criminal prosecution." *State v. Squally,* 132 Wash.2d 333, 340, 937 P.2d 1069 (1997) (citing *State v. Svenson,* 104 Wash.2d 533, 542, 707 P.2d 120 (1985)). Generally, proof that the crime was committed in the state satisfies the jurisdictional element. *Id.* The question of jurisdiction is a question of law, which the court reviews de novo. *Id.*

[4] The question whether the defendants' alleged crimes were committed in the state depends upon delineation of the state boundary. Article XXIV, section 1 of the Washington State Constitution states in relevant part that the northern boundary of the state is "west along said forty-ninth parallel of north latitude." A question of constitutional construction is a question

of law reviewed de novo by the court. *City of Kennewick v. Benton County*, 131 Wash.2d 768, 771, 935 P.2d 606 (1997); *State ex rel. Humiston v. Meyers*, 61 Wash.2d 772, 777, 380 P.2d 735 (1963); *Mount Spokane Skiing Corp. v. Spokane County*, 86 Wash.App. 165, 172, 936 P.2d 1148 (1997).

The State maintains that the language in the state constitution must accord with congressional intent in enacting the Enabling Act and admitting Washington State into the Union, and therefore the issue is one of determining that intent. We agree.

[5][6] The particular question here, the location of a state boundary, is ultimately a preferred question of congressional intent. United States Constitution article IV, section 3, gives Congress the power to create new states and to establish the boundaries of the states. *Texas v. Louisiana*, 410 U.S. 702, 707, 93 S.Ct. 1215, 35 L.Ed.2d 646 (1973). The United States Supreme Court has thus said that its task in resolving state boundary disputes is "to ascertain congressional will when it admitted" a state into the Union. *Id.; see also Illinois v. Kentucky*, 500 U.S. 380, 387, 111 S.Ct. 1877, 114 L.Ed.2d 420 (1991); ***590** *Washington v. Oregon*, 211 U.S. 127, 134-35, 29 S.Ct. 47, 53 L.Ed. 118 (1908); *Louisiana v. Mississippi*, 202 U.S. 1, 46- 47, 26 S.Ct. 408, 50 L.Ed. 913 (1906). Thus, when the Court decides boundary disputes between states,[5] or between the United States

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[5] The United States has original and exclusive jurisdiction of all controversies between two or more states. 28 U.S.C. § 1251 (1994).

and a state, it examines the enabling acts of the states as part of the inquiry into what the boundaries of the states were intended to be. *E.g., Texas v. Louisiana,* 410 U.S. 702, 93 S.Ct. 1215, 35 L.Ed.2d 646; *United States v. Wyoming,* 331 U.S. 440, 67 S.Ct. 1319, 91 L.Ed. 1590 (1947); *Minnesota v. Wisconsin,* 252 U.S. 273, 40 S.Ct. 313, 64 L.Ed. 558 (1920). The Court also examines relevant treaties and conventions and related enactments. *E.g., Vermont v. New Hampshire,* 289 U.S. 593, 53 S.Ct. 708, 77 L.Ed. 1392 (1933); *United States v. Texas,* 162 U.S. 1, 16 S.Ct. 725, 40 L.Ed. 867 (1896); *Missouri v. Kentucky,* 78 U.S. (11 Wall.) 395, 20 L.Ed. 116 (1870); *Missouri v. Iowa,* 48 U.S. (7 How.) 660, 12 L.Ed. 861 (1849).

Our Enabling Act states that the "inhabitants of all that part of the area of the United ****1167** States *now constituting the Territor[y]* of ... Washington, *as at present described,* may become the State[ ]of ... Washington ... as hereinafter provided." 25 Stat. ch. 180, at 676 (1889) (emphasis added). Congress thus invited Washington to become a state with the same boundaries it had as a territory.

The then present description of the Washington Territory included (1) the Oregon Treaty, which provided that the boundary between the United States and the British possessions "shall be continued westward along the said forty-ninth parallel of north latitude to the middle of the channel which separates the continent from Vancouver's Island," Oregon Treaty, *reprinted in Report of the Comm'n* at 191; (2) the 1848 congressional enactment creating the Oregon Territory,

which described the territory as all the United States territory west of the summit of the Rocky Mountains and north of the 42nd parallel, 9 Stat. ch. 177, § 1, at 323 (1848) (ex. 55), thus necessarily including the land south of the 49th parallel; (3) the description of the Organic Act of ***591** 1853 creating the Washington Territory and describing the northern border in relevant part as "that portion of Oregon Territory lying and being south of the forty-ninth degree of north latitude," 10 Stat. ch. 90, at 172 (1853); (4) the 1859 Oregon Enabling Act which directed that until further Congressional action, the "residue of the Territory of Oregon shall be ... a part of the Territory of Washington," 11 Stat. ch. 33 (1859); and (5) an 1863 act forming the Idaho Territory from the eastern part of the Washington Territory, 12 Stat. ch. 177, at 808 (1863) (*see* ex. 141, at 245).

Thus, at the time the Enabling Act was passed in 1889, the description of the northern border of the Washington Territory "as at present described" was, in relevant part, the 49th parallel, the same 49th parallel that constituted the international boundary. Indeed, the 1856 legislation enacted for the purpose of carrying out the survey of the international border as established by the 1846 Oregon Treaty directed location of the "demarcation of that part of the said line of boundary which forms the boundary line *between Washington Territory and the British possessions*." 11 Stat. ch. 87, at 42 (1856) (emphasis added).

However, Congress did not intend a true geographic boundary on the 49th parallel. At the time

the Enabling Act was passed, both the United States and Great Britain continued to deem the international boundary to be on the 49th parallel as located in the survey conducted to carry out the 1846 Oregon Treaty, despite known anomalies. This is clear from the 1870 Declaration that recognized the resulting boundary marked on the ground as the international boundary on "*the 49th Parallel of North Latitude.*" 1870 Declaration, *quoted in Report of the Comm'n* at 197-98 (emphasis added).

Thus, Washington's admission as a state with a northern boundary along the 49th parallel effectuated congressional intent that the new state have as its northern boundary the *592 49th parallel, the same as it had as a territory, which was the same boundary line as the international boundary.[6]

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[6] The defendants urge, however, that the circumstances of Idaho's admission as a state show that Congress recognized that the "49th parallel" was not coextensive with the international boundary between the United States and the British possessions. When Idaho was admitted into the Union by an act of Congress, Congress changed the northern boundary description of the state from the "49th parallel" to "the boundary line between the United States and the British Possessions." 51st Cong. sess. 1, ch. 656 (1890). The reason for the change is not apparent. While the defendants say it shows a difference in congressional intent, we are not persuaded. First, if the two were coextensive, the two descriptions may simply havemeant the same thing. More importantly, the enactment regarding Idaho's border does not alter our analysis regarding Washington's border in light of clear congressional intent as to our own northern boundary.

The defendants maintain, however, that the meaning of a provision in our state constitution, including the boundary definition, is a question of the intent of the framers of the state constitution. They then rely on cases standing for the principle that if the language of the constitution is plain and unambiguous, it reflects the framers' intent and is not subject to judicial interpretation. *E.g., State ex rel. Anderson v. Chapman*, 86 Wash.2d 189, 191, 543 P.2d 229 (1975); **1168 *State ex rel. O'Connell v. Slavin*, 75 Wash.2d 554, 557, 452 P.2d 943 (1969); *State ex rel. O'Connell v. Port of Seattle*, 65 Wash.2d 801, 805, 806, 399 P.2d 623 (1965). Defendants argue that the plain language of the constitution unambiguously defines a geographic boundary.[7]

This court has previously emphasized the importance of determining congressional intent where a provision in the state constitution is mandated by the Enabling Act:

> In order to determine the meaning of the enabling act and our constitutional provisions, *it is necessary to ascertain the intent* of the framers of our constitution and that *of Congress*, first, *in passing the enabling act*, in the preparation of the constitution, *and the acceptance of the state*

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[7] The State says, however, that even under a plain meaning rule, the term 49th parallel is subject to judicial construction. As the State points out, there are at least seven different systems for locating the 49th parallel. This creates a latent ambiguity in the term used in article XXIV, section 1.

> *into the Union.* That intent must be based upon the intent of the instruments considered as a whole.

The constitution must be construed in the sense in which the framers understood it in 1889.

***593** *Boeing Aircraft Co. v. Reconstruction Fin. Corp.*, 25 Wash.2d 652, 658, 171 P.2d 838 (1946) (emphasis added) (citation omitted). *Boeing* concerned a provision in the state constitution, mandated by the Enabling Act, that the state would not tax real property of the United States without its consent. Here, congressional intent plays an even greater role in light of United States Constitution article IV, section 3. Accordingly, we must consider more than the language used in article XXIV, section 1 of our state constitution.

Defendants say, however, that the United States Supreme Court also applies a "plain meaning" approach to boundary determinations. They rely on *New Jersey v. New York*, 523 U.S. 767, 782-84, 118 S.Ct. 1726, 140 L.Ed.2d 993 (1998). However, the argument raised there was whether an 1834 compact between New York and New Jersey providing that New York would retain jurisdiction over Ellis Island meant that additions to the land created by fill were also within New York's jurisdiction. Here, we are faced with the Enabling Act and our state constitutional provision, not a boundary compact between two states that has been approved by Congress. The Court stated in *Central Railroad Co. of New Jersey v. Jersey City*, 209 U.S. 473, 477, 476, 28 S.Ct. 592, 52 L.Ed. 896 (1908), when construing

the same compact at issue in *New Jersey*, 523 U.S. 767, 118 S.Ct. 1726, 140 L.Ed.2d 993, that "[t]he decision depends upon the construction of an agreement made between New Jersey and New York." In contrast, where questions of state boundaries have arisen in other contexts, the Court has, as we do here, examined enabling acts, and relevant treaties and congressional enactments to determine congressional intent when admitting a state into the Union.

Central to defendants' plain language argument is their contention that the Enabling Act was an offer of statehood to which the framers of our state constitution made a counteroffer. They urge that the Enabling Act gave specific mandatory requirements for certain aspects of the state constitution, including religious freedom, matters concerning public and Indian lands, debts and liabilities of ***594** the Territory, and public schools. In contrast, the act did not contain a metes and bounds description for Washington, as some other enabling acts do, and as ours does for the states of North and South Dakota. Further, they say, the phrase "as at present described" in the act is ambiguous because it does not say which description was to be used. The absence of a detailed boundary description and the use of ambiguous language, they urge, meant that this matter was left to the state. Then, the defendants reason, when the state was admitted to the Union by presidential proclamation, the federal government accepted the state's boundary written into the constitution as the true 49th parallel, not the international boundary. Thus, Washington's constitution with its inclusion of the "49th parallel" in

its northern boundary description was a counteroffer that was accepted by presidential proclamation.

Defendants cite no authority for the proposition that the state had the power to make a **1169 counteroffer regarding its boundaries.[8] The Enabling Act did not grant such authority, contrary to defendants' argument. That act delegated to the President the duty, provided that all the provisions of the Enabling Act were complied with, to announce the proposed state's compliance with the act and to issue a proclamation announcing the results of the election in the state, "and thereupon the proposed State[ ] ... shall be deemed admitted by Congress." 25 Stat. ch. 180, § 8 at 679 (1889). The act clearly contemplated that the state conform its constitution to the boundary description stated in the act, i.e., the same boundary as the Washington Territory had.[9]

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[8] There is also a question pertaining to Congress' authority to delegate to the President power to entertain a counteroffer.

[9] This court has said that, when first enacted, the Enabling Act was "no more than a proposition or offer of a contract," but once the state accepted the terms of the Enabling Act by adopting a constitution and the state was admitted by Presidential proclamation, both the United States and Washington were "bound by the provisions of that enabling act." *Boeing Aircraft Co. v. Reconstruction Fin. Corp.*, 25 Wash.2d 652, 658, 171 P.2d 838 (1946).

Nor was there any reason for Congress (or the President) to think that Washington's constitution was a counteroffer *595 with a boundary different from that of the Washington Territory as described at the time of the Enabling Act, i.e., the 49th parallel as coextensive with the international boundary. The federal position at the time was that the international boundary and the Washington Territory boundary were both considered to be on the 49th parallel.

It is clear, in any event, that there was no attempt to make a counteroffer. An examination of relevant history and circumstances shows that the framers' intent was the same as that of Congress.

As the defendants note, in 1878 delegates to what is known as the Walla Walla Convention drafted a state constitution.[10] Delegate Edward Eldridge was appointed to a committee which addressed boundaries. *Washington's First Constitution, 1878, and Proceedings of the Convention, reprinted in The Washington Historical Quarterly, 1915-1919* at 10. The convention adopted a definition of the northern border stating in part "thence, westerly *along the line of the British Possessions*." Id. at 63 (emphasis added). On August 10, 1889, Mr. Eldridge, who was also a delegate to the 1889 convention, "moved to substitute the description in the [1878] Walla Walla Constitution." *Journal* at 334. The motion was "[l]ost." *Id.*

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[10] The voters ratified this constitution, which was drafted without prior federal enabling legislation, but the state was not admitted into the Union at that time. *Journal*, Forword at iii.

Defendants contend that this shows that the constitutional convention in 1889 deliberately rejected language which would have placed the state's northern boundary at the international boundary, and instead opted for a different boundary, the 49th parallel. They reason that the delegates' decision shows that the international boundary and the 49th parallel were not considered to be synonymous at the time.

There is a more plausible reason for the delegates' choice of language, however. As noted, Mr. Comegys, the chairman of the committee dealing with boundaries, asked for and received permission to telegraph the Secretary of the Interior *596 for a description of the Washington Territory. Given that the state Enabling Act stated that the Washington Territory "as at present described" was invited to become a state, the convention's choice of language is not surprising. It chose the same language that then described the territory's northern boundary and the international boundary, i.e., the 49th parallel.

By choosing the same language that Congress had used in enactments and treaties pertaining to the international border and Washington Territory's northern border, the delegates expressed the same intent as Congress had.

The defendants also say that the understanding of our state constitution's framers that the 49th parallel and the international boundary were not the same is shown by the fact that the boundary description in the state constitution uses both the 49th parallel as part of

the northern boundary, and also **1170 uses "the boundary line between the United States and British possessions" to describe the northern boundary of Washington through the waters between Canada and the United States. Wash. Const. art. XXIV, § 1. The boundary through the waters could not have been described as the 49th parallel, however, since it falls nowhere near the 49th parallel by any definition.

The defendants maintain that at the time the Washington constitution was drafted it was known that the international boundary did not lie on the true

49th parallel.[11] They impute this knowledge to the framers, and reason *597 that it follows that the use of

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[11] Defense witness Dr. John Bossler, Director of the Coast and Geodetic Survey from 1983 to 1986, and Director of the National Geodetic Survey from 1980-83, among other things, testified that in 1889 when Washington became a state there was knowledge that there was a difference between the 49th parallel and the international boundary. He said "[s]omewhere around 1800 triangulation became the way in which geodetic computations of positioning was performed." Verbatim Report of Proceedings (RP) at 209. He testified that local datums have been used in this country since it was created. He testified that between 1889 and 1901, when retracement of the international boundary commenced (culminating in the 1908 Treaty and further work done pursuant to that treaty), there were no advances in scientific knowledge regarding geodetic sciences. He testified that a specific hydrographic survey of the Straits of Rosario and De Haro made by the United States Coast Survey in 1858 showed that at least a local network of triangulation had been used to locate positions on the map. *See* Ex. 136. Similarly, he concluded, another hydrographic survey showed use of triangulation for Semiahmoo Bay. *See* Ex. 135. Dr. Bossler also testified extensively about an 1865 Department of the Interior Map of public surveys in Washington Territory that he says clearly shows the difference between the astronomic and the geodetic parallels. *See* Ex. 100.

Dr. Chrisman, a professor of geography at the University of Washington, also testified for the defense. He testified that the deviation shown on the 1865 Department of the Interior map was exaggerated to show, but did show, that the international boundary was not in the same place as the 49th parallel, and explained the deviation was shown only on the western part of the boundary because that is all that was known about at the time. *See* Ex. 100. He also testified that exhibits 135 and 136 showed use of local triangulation. Generally, he summarized his testimony as showing "the development in accuracy that is going on through this period from the 1850's through 1908 and onward." RP at 358.

the term "49th parallel" meant something other than the international boundary.

The evidence is to the contrary. The expert testimony indicated that, while knowledge of geodetic methods may have existed, locating the international boundary by a geodetic method did not occur until after Washington became a state. Even once that had occurred, the United States and Great Britain still considered the international boundary to be along the 49th parallel as located in the 1858-62 astronomic survey.

We are not convinced that the framers had a scientific 49th parallel in mind when drafting the constitution. The weight of the evidence shows that they intentionally used the same language as Congress used in treaties and enactments relating to the Washington Territory's boundary in order to conform to the mandate in the Enabling Act that the new state have the same boundary as the territory had. Given the numerous maps in the record showing coextensive international and territorial boundaries on the same line--the 49th parallel-- we are also not convinced that the voters of the territory thought they were adopting in the constitution a boundary other than one coextensive with the international boundary.

Finally, the defendants say that Washington's failure to modify its language when the federal government did so shows intent that the state boundary is not the same as the international boundary. This seems to be a reference to the

argument pursued by the defendants at the pretrial hearing, *598 and rejected by the trial court, that in entering the 1908 Treaty, the United States switched from defining the international boundary as the 49th parallel to defining it as the physical boundary on the ground.

The 1908 Treaty did not define a new international boundary nor did it change the definition of the existing boundary. It specifically references both the Oregon Treaty of 1846 defining the international boundary as the 49th parallel and the 1870 Declaration approving the maps resulting from the survey conducted to carry out that treaty as defining the international boundary along the 49th parallel. Article VII of the 1908 Treaty **1171 concludes with: "The line so laid down and defined shall be *taken and deemed to be the international boundary as defined and established by treaty provisions and proceedings thereunder as aforesaid.*" 1908 Treaty, *reprinted in Report of the Comm'n* at 8 (emphasis added). The United States and Great Britain clearly adhered to the astronomically based 49th parallel as the international boundary even though it was apparent by 1908 that a geodetic survey would place the boundary in a different location.

Conclusion

[7] At first blush the language "west along said forty-ninth parallel of north latitude" in article XXIV, section 1 appears to refer to the 49th parallel as marked on current maps and as we currently understand it.

However, our Enabling Act, treaties and enactments relating to the international border, and the admission of Washington as a state indicate that Congress intended Washington's borders to be the same as those of the Washington Territory; that the Washington Territory's border was the same as the international boundary between the United States and the British possessions to the north; and that the international boundary lay along the 49th parallel as determined in the astronomic survey conducted to carry out the 1846 Treaty of Oregon. The political and conceptual location of the international *599 and state borders was the same when Washington was admitted as a state, and remains so. Legally, the two boundaries are coextensive.

Affirmed.

ALEXANDER, C.J., SMITH, JOHNSON, IRELAND, BRIDGE, CHAMBERS and OWENS, JJ., concur.

SANDERS, J. (dissenting).

This case raises basic yet simple jurisdictional questions of "what" and "where." *What* is the northern border of our state? *Where*, in relation to that border, did these crimes take place?

The former question is of law, not fact. The answer might be found in the language of our state constitution or the relevant federal law which preceded it. The latter question is of fact, but that fact is undisputed here. As the majority states, all crimes occurred north of the 49th parallel. Majority at 1162.

I.

"Forty Ninth" Parallel Means Forty Ninth Parallel

A. State Constitution

"Appropriate constitutional analysis begins with the text and, for most purposes, should end there as well." *Malyon v. Pierce County*, 131 Wash.2d 779, 799, 935 P.2d 1272 (1997). Judicial interpretation of constitutions is unnecessary and improper when the constitutional language is facially unambiguous. *State ex rel. O'Connell v. Port of Seattle*, 65 Wash.2d 801, 806, 399 P.2d 623 (1965). "It is a cardinal principle of judicial review and interpretation that unambiguous ... constitutional provisions are not subject to interpretation and construction." *State ex rel. Evans v. Bhd. of Friends*, 41 Wash.2d 133, 145-46, 247 P.2d 787 (1952); *see also State ex rel. Wash. Nav. Co. v. Pierce*

County, 184 Wash. 414, 422-23, 51 P.2d 407 (1935) (stating even though desired constitutional interpretation tended to serve good ***600** public purpose and benefit, construction will not be adopted when contrary to clear language used by framers).

The relevant language of our state constitution is clear and unambiguous. It plainly identifies the relevant portion of our northern boundary as "west along said forty-ninth parallel of north latitude." WASH. CONST. art. XXIV, § 1. That answers the state constitutional law inquiry: our northern boundary is the 49th parallel.

B. Federal Law

After detailing the pertinent pre 1889 federal and territorial history, the majority also arrives at the correct legal conclusion that "at the time the Enabling Act was passed in 1889, the description of the northern border of the Washington Territory ... was, in relevant part, the 49th parallel." Majority at 1167. This is correct because the Enabling Act, the federal law authorizing Washington's ****1172** statehood, identified the relevant northern border of our state by expressly referring to the Washington Territory border "as at present described." 25 Stat. ch. 180, at 676 (1889). The Organic Act, the federal law establishing Washington Territory, defined the northern border of Washington Territory as "the forty-ninth degree of north latitude." 10 Stat. ch. 90, at 172 (1853). Therefore, the pertinent federal law which preceded our state constitution leads us to the same conclusion--the 49th parallel.

C. Scientific and Constitutional History

Instead of concluding the 49th parallel means the 49th parallel, the majority opines it means the "international border." Majority at 1167. The majority is still "not convinced that the framers had a scientific 49th parallel in mind when drafting the constitution." *Id.* at 1170. Unlike the majority, I claim no ability to read minds, only the written word. If the 49th parallel has meaning, our job is simply to determine it. I think it does have meaning, a very precise meaning, and a meaning constant over the millennia.

Aided by astronomical observations, Greek astronomer Hipparchus of Nicaea, in the second century B.C., fully *601 developed a system of parallel lines around a spherical earth at equal intervals from the equator to the two poles. *See* DANIEL J. BOORSTIN, THE DISCOVERERS 97 (1995). "By using celestial phenomena common to the whole earth to locate places on the earth's surface, he set the pattern for man's cartographic mastery of this planet." *Id.* Hipparchus divided the earth into 360 sections, roughly 70 miles apart, which later came to be known as "degrees." *Id.*

Ptolemy, however, is credited for first mapping the world. Ptolemy, in his *Geography*, drew on the work of Hipparchus and others, and in fact "may actually have invented[ ] the expressions for latitude and longitude." *Id.* at 98. Like Hipparchus, he too

divided the world into 360 degrees but with additional subdivisions of minutes and seconds. *Id.*[1]

By 1889 the terms "latitude" and "parallel" were used commonly and exclusively with reference to this precise mathematical meaning. A mid 19th century dictionary designed for ready reference and general use defined latitude as "the distance of a place from the equator, expressed in degrees of the earth's circumference." A DICTIONARY OF SCIENCE, LITERATURE, AND ART 644 (W.T. Brande ed., 1853). "Parallels of latitude" meant "small circles parallel to the equator." *Id.* at 892. In a geography textbook of the same time, latitude is defined as the:

> distance north or south from the equator, and is reckoned in degrees, on a meridian, towards the poles; hence the highest latitude is that of 90°, or one-fourth of the earth's circumference. The mean length of a degree of latitude in English miles is 69.05 miles. A degree of any great circle of the earth is commonly reckoned as equal to 69 1/4 miles.

CORNELIUS S. CARTEE, ELEMENTS OF PHYSICAL AND POLITICAL GEOGRAPHY 43-44

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[1] *Measuring* latitude also has a long history. The Ancient Greeks figured out latitudes by observing circumpolar stars. BOORSTIN, *supra*, at 48. By medieval times, sailors used cross-staffs to determine the declination of the sun above the horizon and then compared those measurements with astronomic tables in nautical manuals. *Id.* By approximately the mid 14th century, one could fix a latitude to within half a degree or less. *Id.*

(1855). Even an *abridged* dictionary for use in common schools defined latitude as a "distance north ***602** or south from the equator." JOSEPH E. WORCESTER, AN ELEMENTARY DICTIONARY OF THE ENGLISH LANGUAGE 169 (1860).

Therefore, contrary to the majority opinion, it appears by 1889 the terms "latitude" and "parallel" conveyed a precise mathematical construct, even in common parlance. *See also* Robert F. Utter, *Freedom and Diversity in a Federal System: Perspectives on State Constitutions and the Washington Declaration of Rights*, 7 U. PUGET SOUND L.REV. 491, 509 (1984) (advocating a textual analysis of the state constitution giving the words used their common and ordinary meaning in 1889); *Bloomer v. Todd*, 3 Wash. Terr. 599, 615, 19 P. 135 (1888) (explaining how "[t]he ordinary use of words at the time when used, and the meaning adopted at that time, is usually the best guide for ascertaining ... ****1173** the intent of any written instrument or law at the time it was made that is to govern in enforcing it.").

Of course, one may be mistaken when attempting to locate the 49th parallel on the ground just as a small child may mistake the sum of one and one.[2] But that does not render the term ambiguous in the least; it only tests our skills to find it.

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[2] I am aware of only a single exception to this rule: When I asked five-year-old Brien Galbraith, "how much is one and one," he (correctly) answered "eleven." Even there, however, the problem was with the question, not the answer.

Not that it matters, but it may be of interest that historical evidence proves our founding generation, even by the mid 19th century, knew the 49th parallel was not the same as what had been marked on the ground as the international boundary between the United States and what is now Canada. As the trial court found and the majority also acknowledges, it was then understood as a matter of fact the 49th parallel did not equate to the physical markings on the land. Clerk's Papers (CP) at 51; majority at 1163. As a result, Washington's proposed 1878 constitution referred to the international border, not the 49th parallel, to define our state's northern border. *See* WASH. CONST. art. I (1878), *reprinted in* 10 Wash. Hist. Q. 59 (1919). However, while this same language was proposed to *603 be used in our now operative 1889 constitution, it was purposefully rejected, the convention opting for the 49th parallel text instead. *See* THE JOURNAL OF THE WASHINGTON STATE CONSTITUTIONAL CONVENTION, 1889, at 334, 849 (Beverly Paulik Rosenow ed., 1999).

Accordingly, even if we looked behind the meaning of the words used to see if our framers *really* meant what they said, the people of Washington adopted the scientific, and commonly understood, language of "forty-ninth parallel" purposefully, specifically rejecting alternative proposed language referencing the international border.

> " 'A cardinal rule in dealing with constitutions is that they should receive a consistent and uniform interpretation, so that

> they shall not be taken to mean one thing at one time and another thing at another time, even though the circumstances may have so changed....' " *State ex rel. Munro v. Todd*, 69 Wash.2d 209, 214, 417 P.2d 955, 426 P.2d 978 (1966) (quoting *State ex rel. Banker v. Clausen*, 142 Wash. 450, 454, 253 P. 805 (1927)).

As noted in an 1855 "physical and political geography" textbook:

> The seas, mountains, rivers, and coasts possess the same prominent features at the present day as in the times of Caesar, of Solomon, or of Abraham; while the boundaries and extent of nations have been subject to frequent fluctuations, and human society is ever marked by change and revolution.

CARTEE, *supra*, at 217. Consider a hypothetical: Suppose the United States by force of arms liberated British Columbia from Canadian rule. If our state's northern boundary were defined simply as whatever the international boundary might be, British Columbia would then seem to automatically become part of the State of Washington. Would this *new* international boundary then be the *new* "forty-ninth parallel?"

*604 II.

"Latent" Ambiguity?

The majority attempts to bypass the words of our constitution claiming in a footnote that the 49th parallel as used in article XXIV, section 1 has a "latent ambiguity." Majority at 1168 n. 7. I gather this alleged "latent ambiguity" is meant to identify words clear on their face but somehow unacceptable to the majority in meaning. The majority does not provide citation to any authority, nor does it make any argument whatsoever, that a "latent ambiguity" is an appropriate vehicle to circumvent clear constitutional text. In fact, we have never used this inventive term with reference to application of a fundamental constitutional principle.

By definition "[a] latent ambiguity is one that is not apparent upon the face of the instrument alone [i.e., a patent ambiguity] but which becomes apparent when applying the instrument to the facts as they exist." **1174 *In re Estate of Bergau*, 103 Wash.2d 431, 436, 693 P.2d 703 (1985) (citing *Carney v. Johnson*, 70 Wash.2d 193, 422 P.2d 486 (1967); *Vadman v. Am. Cancer Soc'y*, 26 Wash.App. 697, 615 P.2d 500 (1980); 4 WILLIAM J. BOWE & DOUGLAS H. PARKER, PAGE ON THE LAW OF WILLS § 32.7 (rev. ed.1960) (wills interpretation context)); *see also Brown v. City of Bremerton*, 69 Wash. 474, 476-77, 125 P. 785 (1912) (deed interpretation context).

For example, what if my will devised "my Jaguar sports car to my law clerk"?[3] While unambiguous on its face, the language would be latently ambiguous since I have two law clerks. *See also Vadman,* 26 Wash.App. at 699-700, 615 P.2d 500; MARK REUTLINGER, WILLS, TRUSTS, AND ESTATES 89-90 (2d ed.1998). Although my testamentary intent would appear clear by simply reading the instrument itself, it nevertheless would become unclear in application which beneficiary really was ***605** intended once the instrument was applied. *See also Vadman,* 26 Wash.App. at 699-700, 615 P.2d 500; REUTLINGER, *supra,* at 89.

Assuming we can properly extrapolate these rules to constitutional interpretation,[4] the "forty-ninth parallel" is not "latently" ambiguous in any event. This is because, unlike the example above, no hidden confusion is revealed when applying the "forty-ninth parallel" in the context of this case. It is a precise mathematical construct with but a single meaning and universal application. Moreover, it remains undisputed the crimes occurred above the 49th parallel.[5]

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[3] This example serves as further proof of law clerk influence on the opinion drafting process.

[4] Again, I find no such authority to do so.

[5] Even if one believes "forty-ninth parallel" somehow is latently ambiguous and therefore a resort to extrinsic evidence is warranted, considering sources other than the words the framers expressly used only corroborates they *really meant* the 49th parallel to be our northern border. *See supra* Part I.C.

There also remains a sense of irony in the majority's introduction of this supposed latent ambiguity. The fact the majority feels compelled to modify "ambiguity" with the adjective "latent" only proves its belief the term "forty- ninth parallel" *on its face* is unambiguous. Why else call the ambiguity "latent"? I think the majority has other motives: why recognize a no man's land, even if one truly exists? But the truth is out there, whether the majority chooses to credit it or not: *Fiat justitia et ruant coeli.*[6]

III.

A Category Mistake of Galactic Magnitude

The majority's attempt to find ambiguity (patent or latent) in the term "forty-ninth parallel" is premised on the State's argument "there are at least seven different systems for locating the 49th parallel." Majority at 1168 n. 7. In attempting this argument, however, the majority commits what is known as a "category mistake."

*606 English analytical philosopher Gilbert Ryle introduced the phrase " category mistake" in the mid-20th century to describe a confusion in the attribution of properties or the classification of things. GILBERT RYLE, THE CONCEPT OF MIND 15-22 (1949). As used in legal writing, the category mistake has been described as "an inappropriate linking of disparate concepts spawned by grammatical similarities in

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[6] Let justice be done, though the heavens fall.

representation." Joel R. Cornwell, *Legal Writing as a Kind of Philosophy*, 48 MERCER L.REV. 1091, 1117 (1997). Unfortunately, it is "the lawyer's treasured trope." *Id.*

The majority makes a category mistake of galactic magnitude when it attributes ambiguity to "forty-ninth parallel" by reference to differing methods of determining where the 49th parallel lies on the ground. Properly understood, "the what" and "the where" are different. On the one hand, there exists the category of the things themselves, i.e., the latitudes or parallels of which the 49th obviously is a member. On the other hand, there exists the category of systems to measure where those things might be, i.e., the tools we use to locate latitudes or parallels.

These two categories, however grammatically similar they may be, are distinct and **1175 should not be conflated. While we may use differing empirical procedures to ascertain the location of latitudes, some giving more precise results than others, those systems of measurement do not create ambiguity in meaning of the term "forty-ninth parallel" anymore than a child's mistake in performing addition renders the erroneous sum of one plus one "ambiguous."

IV.

Conclusion

This case is easier than pi. The 49th parallel can be located to the decimal. It is precise as logic. It is as pointed as the needle on a compass. If that term is ambiguous, the language of law is no more than sand shaped into castles at the arbitrary whim of he (or she) who wears the black gown.

***607** I fear the majority begins with the result it seeks to impose rather than reasoning from sound legal principles, known facts, and precise mathematical formulae to find a result. The memorandum decision of the trial court, which this majority affirms, speaks volumes about this results-oriented approach. Dismissing the defense motion to dismiss for lack of jurisdiction, the trial court states "the defense cannot point to any intent on the part of the drafters of the Washington State Constitution to have the northern boundary of the State be inconsistent with the international boundary *except the language of the Constitution itself."* CP at 53 (emphasis added).

Because the "forty-ninth parallel" is our state's northern border as a matter of law, and because the crimes in this case occurred above the 49th parallel as a matter of fact, the defendants' motion to dismiss should have been granted. Accordingly, the trial court must be reversed and this prosecution dismissed.

I therefore dissent.

SUPERIOR COURT OF THE STATE OF WASHINGTON FOR WHATCOM COUNTY

STATE OF WASHINGTON, Plaintiff, vs. HELEN NORMAN, et al, Defendants.	**No. 96-1-00804-7** **COURT'S MEMORANDUM DECISION ON DEFENDANT'S MOTION TO DISMISS ON JURISDICTIONAL GROUNDS**

The State of Washington arrested and charged the various defendants at one or another of the border crossings between the United States and Canada located in Whatcom County. They were charged with crimes against the people of Washington for illegal acts committed within the State (or county), a jurisdictional prerequisite. The defendants maintain that the places where they were arrested and where the crimes were alleged to have been committed are located outside the borders of the State of Washington, and therefore the Court lacks jurisdiction to prosecute them.

The basic argument the Defendants make is straightforward: The Constitution of the State of Washington states that the northern boundary of the State is the "forty-ninth parallel of north latitude". Since as a matter of fact the forty-ninth parallel lies to the south of the international boundary as set out by monuments and memorialized in maps, the crimes were not committed in the State.

For reasons set out hereafter in this opinion, this Court believes that the issue is more fundamental or "political" than the position embraced by the defense. No one disputes the present location of the international boundary on the ground. That boundary has been finally established by treaty. What is disputed is the definition of the boundary and how the pertinent documents should be interpreted.

The Court takes as its starting point in the analysis the first operative boundary treaty between the United States and Great Britain, the Oregon Treaty of 1846 (Exhibits 60 and 128). The boundary was defined there as:

> From the point on the forty-ninth parallel of north latitude where the boundary laid down in existing treaties and conventions between the United States and Great Britain, terminates, the line of boundary between the territories of the United States and those of Her Britannic Majesty shall be continued westward along the said forty-ninth parallel of north latitude to the middle of the channel which separates the continent from Vancouver's Island. (Article I)

Commissioners were appointed by each government, and between 1857 and 1861 that line was surveyed jointly by the parties, monuments placed along the boundary and maps drawn.

In 1870 the parties to the Oregon Treaty issued a Declaration in which they "approved, agreed to, and adopted" the maps produced and authenticated by the commissioners and also "the marks by which the Boundary to the Eastern shore of the Gulf of Georgia had been defined upon the ground." (Exhibit 61, pages 197-198)

Then in 1908 the parties once again addressed the border and signed a document entitled "Treaty Between the United States of America and the United Kingdom Concerning the Boundary Between the United States and the Dominion of Canada from the Atlantic Ocean to the Pacific Ocean." (Exhibit 2) Article VII of that treaty concerned the same boundary now under discussion:

> [I]n 1902 and 1903, Commissioners were designated to act jointly for the purpose of renewing lost or damaged monuments and placing additional monuments where such were needed throughout the course of the boundary along the forty-ninth parallel of north latitude, from the summit of the Rocky Mountains westward to the eastern shore of the Gulf of Georgia, as defined in Article I of the Treaty of June 14, 1846, between the United States and Great Britain and as marked by monuments along its course and laid down on a series of charts...approved and adopted by the two Governments...on February 24, 1870...

At the time of the treaty the work of the commissioners was not yet complete, but the parties to the treaty nonetheless approved the "work done by them in replacing and repairing lost or damaged monuments and the character and location of the several monuments and boundary marks placed by them along said boundary" as well as charts indicating the location of the monuments placed, and a joint report describing in detail the work done by them. The treaty then went on to declare:

> The line so laid down and defined shall be taken and deemed to be the international boundary as defined and established by treaty provisions and the proceedings thereunder as aforesaid, from the summit of the Rocky Mountains to the eastern shore of the Gulf of Georgia.

The defense maintains that this last treaty supersedes all previous expressions of the definition of the international border and that the "forty-ninth parallel" in fact or in concept no longer defines the border, but the "line so laid down" became from that time forward the sole definition of the international boundary, in both practical and political terms.

The State argues that the Treaty of 1908 merely supplemented and memorialized the location and refinement of the boundary markers on the ground pursuant to the Treaty of 1846 but did not affect the concept of the "forty-ninth parallel of north latitude" as set out in that treaty as a description of the boundary.

In analyzing whether the defense is right that the Treaty of 1908 created a whole new concept called the "international boundary", one looks first within the four

corners of the document. The preamble to the 1908 treaty says it is to provide "for the more complete definition and demarcation of the international boundary between the United States and the Dominion of Canada..." The treaty makes direct reference to the Treaty of 1846 in both Articles VII and VIII, and nowhere does it state that the previous treaty has been superseded or replaced.

Each of Articles I through VIII of the Treaty of 1908 deals with a certain section of the border between the United States and Canada. The final paragraph of each of these articles begins, "The line so defined and laid down shall be deemed to be the international boundary." Each Article, including Articles VII and VIII, then goes on to cite previous treaties or "treaty provisions". The Treaty of 1908 retains intact the umbilical cord between itself and all previous treaties including the 1846 Oregon Treaty.

Because the Treaty of 1846 is not explicitly superseded; because all definitions of the international boundary in each section of the Treaty of 1908 are made with reference to previous treaties; and because the Treaty of 1908 was made for the sole purpose of a "more complete definition and demarcation of the international border", the Court finds that the international border remains as defined by the 1846 treaty as supplemented by the Declaration of 1870 and the Treaty of 1908. More plainly put, the international border continues to be conceptually and politically defined as the "forty-ninth parallel of north latitude".

The defendants will argue, however: "This cannot be. We all know and agree that the marks upon the ground now constitute the international boundary and those marks are not located on the forty-ninth parallel of north latitude." Certainly the defendants have clearly

shown that the geodetic forty-ninth parallel is located several hundred feet south of the international boundary. A good deal of research, production of maps and commentary and testimony proved this fact conclusively. There is also no doubt that from the early reports of the commissioners and their attempts to construct a line on the ground to represent the "true astronomic forty-ninth parallel of north latitude" there was general awareness that the marked boundary was not being created on the true 49th parallel of north latitude. (Exhibit 120, page 85) The difficulty in pursuing the line of reasoning which suggests that the State of Washington knowingly created a boundary description in its constitution which failed to equate with the international boundary results from a basic confusion of science with politics, and the definitions which logically grow out of those areas, respectively.

Latitude was first determined by astronomical calculation. The survey of 1857-1861 used this methodology to establish initial points of latitude near the forty-ninth parallel. (Exhibit 120, p. 12; Exhibit 63, pp. 15-16, 27) Irregularities in the mass of the earth and its gravitational field affect the equipment used to make such determinations causing "deflection from the vertical", and as a result irregularities appeared when the commissioners tried to link up different initial determinations. (Exhibit 64, p 386)

To avoid these irregularities and anomalies surveyors typically make one or more astronomical determinations and then, using triangulation, establish the location of other points with reference to the first astronomically determined points. This kind of surveying, known as geodetic surveying, was used in the 1857-61 survey to establish the locations of the

monuments. (Exhibit 120, p. 14) The advantage of such a survey is that all points within it are consistent in relation to one another. Originally such surveys were local, but by 1890 this area was connected to California and the east cost via triangulation in a nationwide geodetic survey. (Exhibit 109, p.14) The initial point or points of a geodetic survey must be carefully chosen so as to avoid the effects of gravitational irregularities which necessarily infect the whole area covered by triangulation. There have been several such geodetic bases or "datums" spanning the entire nation, each successive one being more accurate than its predecessor and causing an adjustment to be made to the identified latitude and longitude of many points within the survey. (e.g. see Exhibits 48 and 49) The forty-ninth parallel now proffered by the defense as arguably the true boundary of the State of Washington is that determined by the most recent geodetic survey.

The Court concludes, however, that the recognized international border represents neither the "true" astromical or geodetic latitude. The commissioners pursuant to the 1846 treaty established their concept of the forty-ninth parallel on the ground, making the compromises they thought fit to resolve their anomalies. The 1908 treaty adopted the work of the prior commissioners as well as the remonumenting and the practical resolutions put into place by its commissoners along the same forty-ninth parallel. **All of these actions were political in nature, and the line established on the ground was affirmed for political reasons to make the boundary identifiable to the average citizen.** In the beginning the only definition of the border was that in the 1846 treaty itself, "the forty-ninth parallel of north latitude". The subsequent declaration in 1870 approved

the 1857-61 survey that "defined" the forty-ninth parallel upon the ground. And the Treaty of 1908 added yet more monumentation and charts to make the same boundary clearer and better defined on the ground and to commit the parties to that line.

By this time everyone knew full well that the marks on the ground were not where geographers considered the true forty-ninth parallel to be. In fact, the very maps made by the commissioners show the forty-ninth parallel as distinct from the international border. (Exhibits 3A, 3B, 3C, 3D) The official report of the same Commission (Exhibit 61) was made in accordance with the provisions of the 1908 treaty. Beginning on page 144 of that report descriptions are made of the geographic locations of the monuments along the international border. Those descriptions indicate that the monuments are not located on the forty-ninth parallel, geographically-speaking. In fact, throughout the report, the latest (1927) North American Datum was used "to publish the geodetic locations of the boundary marks." (Introduction, p. XV) However, in the introduction to the report the Commission makes it clear that the concept of the forty-ninth parallel has not been abandoned:

> The boundary begins at the eastern shore of Georgia Strait and follows the original astronomic determination of the parallel of 49 ° of north latitude to a point in the Lake of the Woods..." (Introduction, p. XIII)

Later on that same page reference is made to the "49th parallel land boundary west of the summit of the Rocky Mountains."

After the 1857-1861 survey was completed, the commissioners agreed that

> [B]etween any two successive defined points, marked on the ground, shown on the maps, and set forth in the accompanying lists, the line of boundary above described [the 1846 treaty description] is to be considered a right or straight line; and that this rule is to apply throughout the entire boundary without regard to the distances between the consecutive points or to the course of the parallel in such intervals.

(Exhibit 64, page 383; Exhibit 120, page 14 at 3) This convention was followed by the survey conducted in the early part of this century as well:

> The retracement of this section of the boundary [from Georgia Strait to the summit of the Rocky Mountains] was completed by running and marking straight lines between the consecutive original monuments or cairns in conformity with the last paragraph of the minutes of the final meeting of the Commission, dated and signed May 7, 1869...

(the text then quotes the above language of the commissioners.) (Exhibit 61, page 30) These straight lines between the markers on the forty-ninth parallel make it impossible that the border could be the astronomical forty-ninth parallel, which was used to set the markers, since the forty-ninth parallel, either geodetic or astronomic, is by definition a curved line. Thus the

border is neither a geodetic nor an astronomical boundary.

The international boundary is still defined by treaty as the forty-ninth parallel. This forty-ninth parallel established by treaty is a political boundary defined on the ground originally as a series of markers located on the astronomical forty-ninth parallel and then completed on the ground as marked by additional monuments and vistas cut through the forest in straight lines between those markers.

The Washington State constitution in 1889 defined and today still defines the State's northern boundary as "along said forty-ninth parallel of north latitude." (Exhibit 59, p. 847; Exhibit 96) This language is virtually identical to the 1846 Oregon treaty establishing the international boundary, "along the said forty-ninth parallel of north latitude."

The enabling act allowed Washington Territory "as at present described" to become a state. Originally the Washington Territory had been created to extend north to the forty-ninth parallel. (Exhibit 56, pp. 11) Later the federal government viewed the territory to extend to the international border. (Exhibit 58 (Oregon Enabling Act); Exhibit 118, pp. 128-29 (1885 Bulletin of the U.S. Geological Survey). The defense maintains that the State intended to create a northern boundary other than the international border. Their only argument is that even if the enabling act intended the State to extend to the international boundary, the constitution created a different boundary. The defense claims that the 1889 boundary committee recommended the "international boundary", but that the convention inexplicably and consciously changed this to the forty-ninth parallel. However, a careful study of the recommendations of that

committee (Exhibit 115) reveals that the language they advised was the "forty-ninth parallel" language contained in the constitution. The actual language from the Committee on Federal Relations, Boundaries and Immigration is as follows:

> The boundaries of the State of Washington shall be as follows: Beginning at a point...thence due North to the forty-ninth parallel of North latitude thence West along said forty-ninth parallel of North latitude ... thence following the Boundary line between the United States and British possessions...

Further, the defense cannot point to any intent on the part of the drafters of the Washington State Constitution to have the northern boundary of the State be inconsistent with the international boundary except the language of the Constitution itself.

In Boeing Aircraft Co. v. Reconstruction Finance Corp., 25 Wn.2d 652,658, 171 P.2d 838, appeal dismissed, 330 U.S. 803 (1946) the Washington Supreme Court has ordered that "[t]he constitution must be construed in the sense in which the framers understood it in 1889." This Court holds that the intent of the drafters can only have been that they were following the language defining the international border as contained in the 1846 treaty which described the international border as the forty-ninth parallel. (Exhibit 60) The Treaty of 1908 has no operative effect on the Washington State Constitution and its definitions, and the language describing the boundary is and was always meant to follow the international boundary.

The Court holds that the state constitution cannot be read to create a boundary for the state separate from the international boundary.

The Court agrees with the defense that the actions of the State of Washington subsequent to the adoption of the constitution are not relevant. It is the original intent of the framers that matters in the interpretation of a constitution, not later actions by governments which may or may not conform to the constitution.

The analysis of the Court vitiates any argument that the 1908 treaty changed the international boundary. That treaty further clarified the boundary which had been defined on the ground by the marks made there in the 1857-61 survey as adopted by the 1870 declaration.

The defense argues the rule of lenity should apply if the court determines the Washington State Constitution to be ambiguous. While the present cases are criminal cases, the interpretation of a constitution is not the equivalent of the interpretation of a criminal statutes where the rule of lenity governs. The rule of lenity does not apply to interpretation of constitutions.

The Court is therefore constrained to deny defense motions to dismiss for lack of jurisdiction.

The Court wishes to compliment counsel for their diligent, scholarly, careful and intelligent presentation of this case throughout.

DONE IN CHAMBERS this 12th day of August, 1999.

DAVID A. NICHOLS, JUDGE

TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE UNITED KINGDOM CONCERNING THE BOUNDARY BETWEEN THE UNITED STATES AND THE DOMINION OF CANADA FROM THE ATLANTIC OCEAN TO THE PACIFIC OCEAN.

SIGNED AT WASHINGTON, APRIL 11, 1908.

(Ratification exchanged at Washington, June 4, 1908.)

The United States of America and His Majesty Edward the Seventh, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, and Emperor of India, being desirous of providing for the more complete definition and demarcation of the international boundary between the United States and the Dominion of Canada, have fore that purpose resolved to conclude a treaty, and to that end have appointed as their Plenipotentiaries:

The President of the United States of America. Elihu Root, Secretary of State of the United States; and

His Britannic Majesty, Right Honorable James Bryce, O.M., his Ambassador Extraordinary and Plenipotentiary at Washington;

Who, after having communicated to each other their respective full powers, which were found to be in due and proper form, have agreed to and concluded the following articles:

Article I.

THE BOUNDARY THROUGH PASSAMAQUODDY BAY.

The High Contracting Parties agree that each shall appoint, without delay, an expert geographer or surveyor to serve as Commissioners for the purpose of more accurately defining and marking the international boundary line between the United States and the Dominion of Canada in the waters of Passamaquoddy Bay from the mouth of the St. Croix River to the Bay of Fundy, and that in defining and marking said boundary line the Commissioners shall adopt and follow, as closely as may be, the line surveyed and laid down by the Commissioners appointed under Article II of the Treaty of July 22, 1892, between the United States and Great Britain, so far as said Commissioners agreed upon the location of said line, namely:

(1) From a point at the mouth of the St. Croix River defined by the ranges established by them, by a connected series of six straight lines defined by ranges and cross ranges, to a point between Treat Island and Friar Head, likewise defined by ranges and cross ranges established by them; and also

(2) From a point in Quoddy Roads, defined by the intersection of the range passing through the position of the Beacon of 1886 and Lubec Channel Light, with a range established by them on the west shore of Quoddy Roads along the course of this latter

range, which is about 80° 35′ east of true south, into the Bay of Fundy.

In ascertaining the location of the above-described line, the Commissioners shall be controlled by the indications of the range marks and monuments established along its course by said former Commissioners and by the charts upon which the said Commissioners marked the line as tentatively agreed upon by them.

The remaining portion of the line, lying between the two above-described sections, and upon the location of which said former Commissioners did not agree, shall pass through the center of the Lubec Narrows Channel between Campo Bello Island and the mainland, and, subject to the provisions hereinafter stated, it shall follow on either side of the said Narrows such courses as will connect with the parts of the line agreed upon as aforesaid, and such boundary shall consist of a series of straight lines defined by distances and courses; but inasmuch as differences have arisen in the past as to the location of the line with respect to Pope's Folly Island above Lubec Narrows and with respect to certain fishing grounds east of the dredged channel below Lubec Narrows, it is agreed that each of the High Contracting Parties shall present to the other within six months after the ratification of this Treaty a full printed statement of the evidence, with certified copies of original documents referred to therein which are in its possession, and the arguments upon which it basis its contentions, with a view to arriving at an adjustment of the location of this portion of the line in accordance with the true intent and meaning of the

provisions relating thereto of the treaties of 1783 and 1814 between the United States and Great Britain, and the awarded of the Commissioners appointed in that behalf under the treaty of 1814; it being understood that any action by either or both Governments or their representative authorized in that behalf or by the local governments on either side of the line, whether prior or subsequent to such treaties and award, tending to aid in the interpretation thereof, shall be taken into consideration in determining their true intent and meaning. Such agreement, if reached, shall be reduced to writing in the form of a protocol and shall be communicated to the said Commissioners, who shall lay down and mark this portion of the boundary in accordance therewith and as herein provided.

In the event of a failure to agree within six months after the date of exchanging the printed statements aforesaid, the question of which Government is entitled to jurisdiction over such island and fishing grounds under treaty provisions, and proceedings thereunder, interpreted in accordance with their true intent and meaning as above provided, and by reason of any rights arising under the recognized principles of intentional law, shall be referred forthwith for decision upon the evidence and arguments submitted as aforesaid, with such additional statement of facts as may be appropriate, and an argument in reply on each side, to an arbitrator to be agreed upon by the two Governments, or, in case of a failure to agree, to be appointed by a third Power selected by the two Governments by common accord, or, if no agreement is thus arrived at, each Government shall select a different Power and the choice of the

arbitrator shall be made in concert by the Powers thus selected. The decision of such arbitrator shall be final, and the line shall be laid down and marked by the said Commissioners in accordance therewith and as herein provided.

The arbitrator shall be requested to deliver, together with his award, a statement of all the costs and expenses incurred by him in connection with the arbitration, which shall forthwith be repaid by the two Governments in equal moieties.

It is further agreed that if, under the foregoing provisions, the boundary be located through the channel to the east of the dredged channel above mentioned, the latter shall be equally free and open for the passage of ships, vessels, and boats, of both parties.

The entire boundary shall be marked by permanent range marks established on land and, if desirable in the opinion of Commissioners, by buoys in the water, so far as practicable, and by such other boundary marks and monuments and at such points as the Commissioners may determine to be necessary; but the said Commissioners shall proceed to define and mark and charge the portion of the line agreed upon by the former Commissioners under the Treaty of 1892 aforesaid without waiting for the final determination of the location of the remaining portion of the line.

The course of the said boundary line as defined and marked as aforesaid shall be laid down by said Commissioners on quadruplicate sets of accurate modern charts prepared or adopted by them for that purpose, which charts shall be certified and signed by

the Commissioners, and two duplicate originals thereof shall be filed by them with each Government; and they shall also prepare in duplicate and file with each Government a joint report or reports under their hands and seals describing in detail the course and location of the boundary line and the range marks and monuments and buoys marking it.

The line so defined and laid down shall be taken and deemed to be the international boundary from the Bay of Fundy to the mouth of the St. Croix River, as established by treaty provisions and the proceedings thereunder.

ARTICLE II.
THE BOUNDARY FROM THE MOUTH TO THE SOURCE OF THE ST. CROIX RIVER.

Whereas Article II of the Treaty of 1783 between the United States and Great Britain provides that a line drawn along the middle of the River St. Croix from its mouth in the Bay of Fundy to its source shall be, between those points, the intentional boundary between the United States and the British possessions in North American, and the identity of the River St. Croix has been determined by the Commissioners appointed for that purpose under Article V of the Treaty of 1794 between the United States and Great Britain, and the location of the mouth and the source of said river has been duly established, and the course of said river has been described, surveyed, and charted by said Commissioners as appears from their joint report dated the 25th day of October, 1798, and from the chart or plan of said river prepared sand filed by them with said report, but said line of boundary along the middle

of said river was not laid down by them on said charge or plan and was not marked or monumented by them along the course of said river; and whereas pursuant to an additional article dated March 15, 1798, supplementing the provisions of the Treaty of 1794 above referred to, a monument was erected by joint action of the two Governments marking the source of the River St. Croix, but said line of boundary through the River St. Croix has not otherwise been monumented and has never been laid down on charts by joint action of the two Governments: therefore, in order to complete and render thoroughly effective the demarkation of the boundary described and established as aforesaid,

It is agreed that each of the High Contracting Parties shall appoint without delay, an expert geographer or surveyor as a Commissioner, and the Commissioners so appointed shall jointly lay down upon accurate modern charts, to be prepared or adopted by them for that purpose, the line of boundary along the middle of the River St. Croix from its mouth to its source as defined and established by the existing treaty provisions and the proceedings thereunder, above referred to, with the agreed understanding, however, that the line of boundary through said river shall be a water line throughout and shall follow the center of the main channel or thalweg as naturally existing, except where such course would change, or disturb, or conflict with the national character of an island as already established by mutual recognition and acquiescence in which case the line shall pass on the other side of any such island following the middle of the channel nearest thereto or if the Commissioners

find that the national character of any island is in dispute, the question of its nationality shall be submitted by them to their respective Governments, with a chart or map certified jointly by said Commissioners, show the depth and volume of the water at its high and law stages between such island and the river banks on each side and indicating the course of the main channel of the river as it passes such island, together with a descriptive statement by said Commissioners showing the reasons for selecting such channel as the main channel; and in all such cases the High Contracting Parties agree that the location of the boundary with respect to each island in dispute shall be determined and settled in accordance with the following rules:

(1) The nationality of each island in dispute shall be determined by the predominance of the claims established on either side to such island, arising from the exercise of jurisdiction by the local governments on either side of the line.

(2) The burden of providing the nationality of any such island shall be upon the party seeking to change the general course of the boundary as above prescribed so as to include such island on its own side of the boundary.

(3) The selection by the Commissioners of the main channel passing such island shall not be conclusive upon the parties hereto and is subject to review, but the burden of providing the main channel to be other than the one selected shall be upon the party proposing the change.

The Government proposing such change in the prescribed course of the boundary shall, upon the

submission of the question of the nationality of any island or islands by the Commissioners as aforesaid, promptly present to the other Government a printed statement, with certified copies of any original documents in its possession referred to the therein, showing the grounds and arguments upon which its claim of jurisdiction and ownership with respect to such island rests. Unless an agreement is reached upon the presentation of such statement, the Government to which such statement is presented shall within six months after its receipt present in reply a similar statement showing the grounds and arguments upon which the claims of the other government are contested. If an agreement is reached between the two Governments, it shall be reduced to writing in the form of a protocol and shall be communicated to the said Commissioners, who shall proceed to lay down and mark the boundary so as to leave such island on the side of the boundary to which it is shown it belongs, in accordance with the determination of its nationality arrived at as aforesaid.

In the event of a failure by the two Governments to come to an agreement within six months after the presentation of the printed statements in reply herein above provided for, then the question of the nationality of the island in dispute shall be referred forthwith for decision under the rules herein above set forth for the determination of that question, and under the recognized principles of international law not inconsistent therewith, and upon the evidence and arguments submitted as aforesaid, with such additional statement of facts as may be appropriate, and such further printed argument on each side as may

be desired, to an arbitrator to be agreed upon by the two Governments, or, in case of a failure to agree, to be appointed by a third Power selected by the two Governments by common accord, or, if no agreement is thus arrived at, each Government shall select a different Power and the choice of the arbitrator shall be made in concert by the Powers thus selected. The decision of such arbitrator shall be final, and the line shall be laid down and marked by the said Commissioners in accordance therewith and as herein provided.

The arbitrator shall be requested to deliver, together with his award, a statement of all the costs and expenses incurred by him in connection wit the arbitration, which shall forthwith be repaid by the two Governments in equal moieties.

It is further agreed that so far as practicable the said Commissioners shall establish boundary monuments and ranges and buoys marking the course and location of the said line, and showing on which side of the boundary the several islands lying in said river belong, wherever in their judgment it is desirable that the boundary be so marked.

The charts upon which the boundary is marked as aforesaid shall be in quadruplicate, and shall be certified and signed by said Commissioners, and two duplicate originals thereof shall be filed by them with each Government, and it shall also be the duty of said Commissioners to prepare in duplicate, and file with each Government, a joint report under their hands and seals describing the line so marked by them and the monuments and range marks and buoys marking it.

The line so defined and laid down shall be taken and deemed to be the international boundary from the mouth to the source of the St. Croix River as established by treaty provisions and the proceedings thereunder as aforesaid..

ARTICLE III.

THE BOUNDARY FROM THE SOURCE OF THE ST. CROIX RIVER TO THE ST. LAWRENCE RIVER.

Whereas the remonumenting of the course of the boundary defined and laid down under the provisions of Articles I and VI of the Treaty of August 9, 1842, between the United States and Great Britain has already been undertaken without a formal treaty agreement, but by the joint and concurrent action of the Governments of the United States and Great Britain, certain monuments between Vermont and Canada have been relocated in 1849, and the portion of said boundary extending between Hall's Stream and the St. Lawrence River in part having been remonumented in recent years and in part is now being remonumented under such action on both sides; and whereas the Commissioners appointed under Article VI of the Treaty of 1842 aforesaid were required to and did mark by monuments the land portion only of said line, and were not required to an did not mark by monuments the portions of the boundary extending along water courses, with the exception that the nationality of the several islands in the St. John River was indicated by monuments erected thereon and a series of monuments was placed by them along the edge of certain of the

water courses to fix the general direction of the boundary, most of which monuments have since disappeared, but the entire boundary, including its course through the waterways as well as on land, was charted and marked on maps by said Commissioners under the provisions of Article VI above referred to, and the nationality of the respective islands in the St. John River was determined by them, as appears from the joint report filed by said Commissioners dated June 28, 1847, and the series of maps signed by said Commissioners and filed with their joint report; and whereas the portion of the line through said waterways has not since been monumented or marked along its course by joint action of the two governments, and the monuments placed by said Commissioners along the land portion of said boundary require repairing and renewing where such work has not already been done in recent years, and additional or supplementary intermediate monuments at convenient points are required under modern conditions: therefore, in order to carry on and complete the work already undertaken as aforesaid, and to reestablish the location of said boundary and render thoroughly effective the demarcation of the said boundary as existent and established,

It is agreed that each of the High Contracting Parties shall appoint, without delay, an expert geographer or surveyor as a Commissioner, and under the joint direction of such Commissioners the lost or damaged boundary monuments shall be relocated and repaired, and additional monuments and boundary marks shall be established wherever necessary in the judgment of the Commissioners to meet the requirements of modern conditions along the course of

the land portion of said boundary, and where the said boundary runs through waterways it shall be marked along its course, so far as practicable, by buoys and monuments in the water and by permanent ranges established on the land, and in such other way and at such points as in the judgment of the Commissioners it is desirable that the boundary be so marked; and it is further agreed that the course of the entire boundary, as described in Article I of the Treaty of 1842 and as laid down as aforesaid under Article VI of that Treaty, shall be marked by said Commissioners upon quadruplicate sets of accurate modern charts prepared or adopted by them for that purpose, and that said charts so marked shall be certified and signed by them and two duplicate originals thereof shall be filed with each Government, and said Commissioners shall also prepare in duplicate and file with each Government a joint report or reports describing in detail the course of the boundary so marked by them, and the character and location of the several monuments and boundary marks and ranges marking it.

The line so defined and laid down shall be taken and deemed to be the international boundary as defined and laid down under Articles I and VI of the said Treaty of 1842.

ARTICLE IV.

THE BOUNDARY FROM ITS INTERSECTION WITH THE ST. LAWRENCE RIVER TO THE MOUTH OF PIGEON RIVER

The High Contracting Parties agree that the existing International Waterways commission, constituted by concurrent action of the United States

and the Dominion of Canada and composed of three Commissioners on the part of the United States and three Commissioners on the part of the Dominion of Canada, is hereby authorized and empowered to ascertain and reestablish accurately the location of the international boundary line beginning at the point of its intersection with the St. Lawrence River near the forty-fifth parallel of north latitude, as determined under Articles I and VI of the Treaty of August 9, 1842, between the United States and Great Britain, and thence through the Great Lakes and communicating waterways to the mouth of the Pigeon River, at the western shore of Lake Superior, in accordance with the description of such line in Article II of the Treaty of Peace between the United States and Great Britain, dated September 3, 1783, and of a portion of such line in Article II of the Treaty of August 9, 1842, aforesaid, and as described in the joint report dated June 18, 1822, of the Commissioners appointed under Article VI of the Treaty of December 24, 1814, between the United States and Great Britain, with respect to a portion of said line and as marked on charts prepared by them and filed with said report, and with respect to the remaining portion of said line as marked on the charts adopted as treaty charts of the boundary under the provisions of Article II of the Treaty of 1842, above mentioned, with such deviation from said line, however, as may be required on account of the cession by Great Britain to the United States of the portion of Horse Shoe Reef in the Niagara River necessary for the light-house erected there by the United States in accordance with the terms of the protocol of a conference held at the British Foreign Office December 9, 1850, between the representatives of the two

Governments and signed by them agreeing upon such cession; and it is agreed that wherever the boundary is shown on said charts by a curved line along the water the Commissioners are authorized in their discretion to adopt, in place of such curved line, a series of connecting straight lines defined by distances and courses and following generally the course of such curved line, but conforming strictly to the description of the boundary in the existing treaty provisions, and the geographical coordinates of the turning points of such line shall be stated by said Commissioners so as to conform to the system of latitudes and longitudes of the charts mentioned below, and the said Commissioners shall so far as practicable mark the course of the entire boundary line located and defined as aforesaid, by buoys and monuments in the waterways and by permanent range marks established on the adjacent shores or islands, and by such other boundary marks and at such points as in the judgment of the Commissioners it is desirable that the boundary should be so marked; and the line of the boundary defined and located as aforesaid shall be laid down by said commissioners on accurate modern charts prepared or adopted by them for that purpose, in quadruplicate sets, certified and signed by the Commissioners, two duplicate originals of which shall be filed by them with each Government; and the Commissioners shall also prepare in duplicate and file with each Government a joint report or reports describing in detail the course of said line and the range marks and buoys marking it, and the character and location of each boundary mark. The majority of the Commissioners shall have power to render a decision.

The line so defined and laid down shall be taken and deemed to be the *international boundary* as defined and established by treaty provisions and the proceedings thereunder as aforesaid from its intersection with the St. Lawrence River to the mouth of the Pigeon River.

ARTICLE V.

THE BOUNDARY FROM THE MOUTH OF THE PIGEON RIVER TO THE NORTHWESTERNMOST POINT OF THE LAKE OF THE WOODS.

In order to complete and perfect the demarcation of the international boundary line between the United States and the Dominion of Canada from the mouth of Pigeon River, at the western short of Lake Superior, to the northwesternmost point of the Lake of the Woods, which boundary is defined in Article II of the Treaty of Peace between the United States and Great Britain dated September 3, 1783, and in Article II of the Treaty of August 9, 1842, between the United States and Great Britain, wherein is defined also the location of the said northwesternmost point of the Lake of the Woods, and the greater part of the said boundary is marked on charts covering that section of the boundary adopted as treaty charts of the boundary under the provisions of Article II of the Treaty of 1842 aforesaid, but has never been actually located or monumented along its course by joint action of the two Governments, and no joint survey of its course has been made since the survey under the direction of the Commissioners appointed under Article VII of the Treaty of December 24, 1814, between the United States

and Great Britain, under whose direction the charts above mentioned were prepared.

It is agreed that each of the High Contracting Parties shall appoint, without delay, an expert geographer or surveyor as Commissioners, who shall reestablish and fix the actual location of said entire boundary described and charted as aforesaid, and designate the side of the boundary upon which each island adjacent to the boundary belongs, it being mutually understood that the boundary, so far as practicable, shall be a water line and shall not intersect islands lying along its course, and the Commissioners shall so far as practicable mark such boundary along its course by monuments and buoys and range marks, and such other boundary marks as the Commissioners may determine, and at such points as in their judgment it is desirable that the boundary shall be so marked; and it is further agreed that the course of the entire boundary as described and laid down as aforesaid and as monumented by said Commissioners shall be marked by them upon quadruplicate sets of accurate modern charts prepared or adopted by them for that purpose, and that said charts so marked shall be certified and signed by them and two duplicate originals thereof shall be filed with each Government, and said Commissioners shall also prepare in duplicate and file with each Government a joint report or reports describing in detail the course of the boundary so marked by them and the character and location of the several monuments and boundary marks and ranges marking it.

The line so defined and laid down shall be taken and deemed to be the international boundary as defined and established under the aforesaid treaties

from the mouth of the Pigeon River to the northwesternmost point of the Lake of the Woods.

ARTICLE VI.
THE BOUNDARY FROM THE NORTHWESTERNMOST POINT OF THE LAKE OF THE WOODS TO THE SUMMIT OF THE ROCKY MOUNTAINS

In order to complete and render thoroughly effective the demarcation of the international boundary between the United States and the Dominion of Canada from the nortwesternmost point of the Lake of the Woods to the summit of the Rocky Mountains, which boundary, according to existing treaties, runs due south from said northwesternmost point to the forty-ninth parallel of north latitude and thence along that parallel to the summit of the Rocky Mountains, and has been surveyed and charted and monumented as appears from the series of twenty-four sectional maps covering this portion of the boundary prepared and filed by the Joint Commission appointed for that purpose by joint action of the two Governments in 1872,

It is agreed that each of the High Contracting Parties shall appoint, without delay, an expert geographer or surveyor as a Commissioner, and under the joint direction of such Commissioners lost or damaged monuments along the course of said boundary shall be relocated and repaired and additional monuments and boundary marks shall be established wherever necessary, in the judgment of the Commissioners, to meet the requirements of modern conditions and to render more effective the

demarcation of the existent boundary established under the treaty provisions and proceedings thereunder as aforesaid; and it is further agreed that in carrying out these provisions the said Commissioners shall observe the agreement stated in the protocol of the final meeting, dated May 29, 1876, of the Joint Commission aforesaid, which is as follows:

"2. In the intervals between the monuments along the parallel of latitude, it is agreed that the line has the curvature of a parallel of 49° north latitude; and that such characteristic shall determine all questions that may hereafter arise with reference to the position of the boundary at any point between neighboring monuments.

"3. It is further agreed that, in the event of any of the said three hundred and eighty-eight monuments or marks being obliterated beyond the power of recognition, the lost site or sites shall be recovered by their recorded position relatively to the next neighboring unobliterated mark or marks."

It is further agreed that the said Commissioners shall mark upon quadruplicate sets of accurate modern charts prepared or adopted by them for that purpose the entire course of said boundary and the location of the boundary monuments and marks established along the course of said boundary, and two duplicate originals thereof shall be filed with each Government, and said Commissioners shall also prepare in duplicate and file with each Government a joint report describing in detail the work done by them in replacing and repairing lost or damaged monuments and the character and location of the several monuments and boundary marks placed by them along said boundary.

The line so laid down and defined shall be taken and deemed to be the international boundary as defined and established by treaty provisions and the proceedings thereunder as aforesaid from the northwesternmost point of the Lake of the Woods to the summit of the Rocky Mountains.

ARTICLE VII.
THE BOUNDARY FROM THE SUMMIT OF THE ROCKY MOUNTAINS TO THE GULF OF GEORGIA.

Whereas, by concurrent action of the Government of the United States and the Government of Great Britain in 1902 and 1903. Commissioners were designated to act jointly for the purpose of renewing lost or damaged monuments and placing additional monuments where such were needed throughout the course of the boundary along the forty-ninth parallel of north latitude, from the summit of the Rocky Mountains westward to the eastern shore of the Gulf of George, as defined in Article I of the Treaty of June 15, 1846, between the United States and Great Britain and as marked by monuments along its course and laid down on a series of charts, seven in number, by a Joint Commission organized in 1858 for that purpose and composed of two Commissioners appointed one by each Government, which charts, duly certified and authenticated in duplicate by said Commissioners, were approved and adopted by the two Governments, as appears from the declaration in writing to that effect signed on February 24, 1870, at Washington by duly authorized Plenipotentiaries of the respective Governments, and it appearing that the

remonumenting of this line by the Commissioners first above referred to is now approaching completion;

It is hereby agreed by the High Contracting Parties that when such work is completed the entire course of said boundary, showing the location of the boundary monuments and marks established along the course of the boundary, shall be marked upon quadruplicate sets of accurate modern charts prepared or adopted for that purpose, and the said Commissioners, or their successors, are hereby authorized and required to so mark the line and designate the monuments on such charts, two duplicate originals of which shall be filed with each Government, and the said Commissioners, or their successors, shall also prepare in duplicate and file with each Government a joint report describing in detail the work done by them in replacing and repairing lost or damaged monuments and the character and location of the several monuments and boundary marks placed by them along said boundary.

The line so laid down and defined shall be taken and deemed to be the international boundary as defined and established by treat provisions and the proceedings thereunder as aforesaid, from the summit of the Rocky Mountains to the eastern shore of the Gulf of Georgia.

ARTICLE VIII.

THE BOUNDARY FROM THE FORTY-NINTH PARALLEL TO THE PACIFIC OCEAN.

The High Contracting Parties agree that each shall appoint, without delay, an expert geographer or surveyor to serve as Commissioners for the purpose of delineating upon accurate modern charts, prepared or adopted by them for that

purpose, the international boundary line between the United States and the Dominion of Canada from the forty-ninth parallel of north latitude along the middle of the channel which separates Vancouver's Island from the mainland and the middle of the Haro Channel and of Fuca's Straits to the Pacific Ocean, as defined in Article I of the Treaty of June 15, 1846, between the United States and Great Britain, and as determined by the award made on October 21, 1872, by the Emperor of Germany as arbitrator pursuant to the provisions of Articles XXXIV-XLII of the Treaty of May 8, 1871, between the United States and Great Britain, and as traced out and marked on a quadruplicate set of charts prepared for that purpose and agreed upon and signed by the duly authorized representatives of the respective Governments, as appears from the protocol of a conference at Washington on March 10, 1973, between such representatives which was signed by them on that date, and as defined by them in a written definition of said boundary signed by them and referred to in and attached to said protocol, and it is agreed that the said Commissioners shall adopt in place of the curved line passing between Saturna Island and Patos Island as shown on said charts a straight line running approximately north and south through a point midway between the eastern point of Saturna Island and the western point of Patos Island and intersecting the prolongations of the two straight lines of the boundary now joined by a curved line. The entire line thus laid down shall consist of a series of connecting straight lines defined by distances and courses; and the Commissioners are authorized to select and establish such reference marks on shore as they may deem necessary for the proper definition and location on the water of the boundary aforesaid. A quadruplicate set of such charts, showing the lines so laid down and marked by them and the location of the several marks or monuments selected or established by them along its course, shall be

signed by them and two duplicate originals thereof shall be filed by them with each Government, and the Commissioners shall also prepare in duplicate and file with each Government a joint report, or reports, describing in detail the course of said line and the boundary marks and their location along its course.

The line so defined and laid down shall be taken and deemed to be the international boundary, as defined and established by treaty provisions and the proceedings thereunder as aforesaid, from the forty-ninth parallel of north latitude along the middle of the channel which separates Vancouver's Island from the mainland and the middle of Haro Channel and of Fuca's Straits to the Pacific Ocean.

ARTICLE IX.
GENERAL PROVISIONS.

The Commissioners appointed under the provisions of this Treaty shall proceed without delay to perform the duties assigned to them, but each Commissioner shall, before entering upon his duties, make oath in writing that he will impartially and faithfully perform his duties as such Commissioner.

In case a vacancy occurs in any of the Commissions constituted by this Treaty, by reason of the death, resignation, or other disability of a Commissioner, before the work of such Commission is completed, the vacancy so caused shall be filled forthwith by the appointment of another Commissioner by the party on whose side the vacancy occurs, and the Commissioner so appointed shall have the same powers and be subject to the same duties and obligations as the Commissioner originally appointed.

If a dispute or difference should arise about the location or demarcation of any portion of the boundary covered by the provisions of this Treaty and an agreement with respect thereto is not reached by the commissioners charged herein with locating and marking such portion of the line, they shall make a report in writing jointly to both Governments, or severally each to his own Government, setting out fully the questions in dispute and the differences between them, but such Commissioners shall, nevertheless, proceed to carry on and complete as far as possible the work herein assigned to them with respect to the remaining portions of the line.

In case of such a disagreement between the Commissioners, the two Governments shall endeavor to agree upon an adjustment of the questions in dispute, and if an agreement is reached between the two Governments it shall be reduced to writing in the form of a protocol, and shall be communicated to the said Commissioners, who shall proceed to lay down and mark the boundary in accordance therewith, and as herein provided, but without prejudice to the special provisions contained in Articles I and II regarding arbitration.

It is understood that under the foregoing articles the same persons will be appointed to carry out the delimitation of boundaries in the several sections aforesaid, other than the section covered by Article IV, unless either of the Contracting Powers finds it expedient for some reason which it may think sufficient to appoint some other person to be Commissioner for any one of the above-mentioned sections.

Each Government shall pay the expenses of its own Commissioners and their assistants, and the cost or marking and monumenting the boundary shall be paid in equal moieties by the two Governments.

ARTICLE X.

This Treaty shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof, and by His Britannic Majesty; and the ratifications shall be exchanged in Washington as soon as practicable.

In faith whereof the respective Plenipotentiaries have signed this Treaty in duplicate and have hereunto affixed their seals.

Done at Washington the 11th day of April in the year of our Lord one thousand nine hundred and eight.

ELIHU ROOT [SEAL.]
JAMES BRYCE [SEAL.]

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas the Congress of the United States did by an act approved on the twenty-second day of February one thousand eight hundred and eighty-nine, provide that the inhabitants of the Territory of Washington might, upon the conditions prescribed in said act, become the State of Washington:

And whereas it was provided by said act that delegates elected as therein provided, to a Constitutional convention in the Territory of Washington, should meet at the seat of government of said Territory; and that, after they had met and organized they should declare on behalf of the people of Washington that they adopt the Constitution of the United States; whereupon the said convention should be authorized to form a State Government for the proposed State of Washington;

And whereas it was provided by said act that the Constitution so adopted should be republican in form and make no distinction in civil or political rights on account of race or color, except as to Indians not taxed, and not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence; and that the Convention should by an ordinance irrevocable without the consent of the United States and the people of said State make certain provisions prescribed in said act;

And whereas it was provided by said act that the Constitution thus formed for the people of

Washington should, by an ordinance of the Convention forming the same, be submitted to the people of Washington at an election to be held therein on the first Tuesday in October, eighteen hundred and eight-nine, for ratification or rejection by the qualified voters of said proposed State; and that the returns of said election should be made to the Secretary of said Territory, who, with the Governor and Chief justice thereof, or any two of them, should canvass the same; and if a majority of the legal votes case should be for the Constitution, the Governor should certify the result to the President of the United States, together with a statement of the votes cast thereon, and upon separate articles or propositions and a copy of said Constitution, articles, propositions and ordinances;

And whereas it has been certified to me by the Governor of said Territory that within the time prescribed by said act of Congress a Constitution for the proposed State of Washington has been adopted and that the same, has been ratified by a majority of the qualified voters of said proposed State in accordance with the conditions prescribed in said act;

And whereas it is also certified to me by the said Governor that at the same time the body of said Constitution was submitted to a vote of the people two separate articles entitled "Woman Suffrage" and "Prohibition" were likewise submitted, which said separate articles did not receive a majority of the votes cast thereon or upon the Constitution and were rejected; also that at the same election the question of the location of a permanent seat of government was so submitted and that no place received a majority of all the votes cast upon said question;

And whereas a duly authenticated copy of said Constitution and articles, as required by said act, has been received by me;

Now, therefore, I, Benjamin Harrison, President of the United States, do, in accordance with the provisions of the act of Congress aforesaid, declare and proclaim the fact that the conditions imposed by Congress on the State of Washington to entitle that State to admission to the Union have been ratified and accepted and that the admission of the said State into the Union is now complete.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this eleventh (11th) day of November, in the year of our Lord one thousand eight hundred and eighty-nine, and of the Independence of the United States of America the one hundred and fourteenth.

BENJ. HARRISON.

By the President:

JAMES G. BLAINE,

Secretary of State.

AN ACT to provide for the division of Dakota into two States and to enable the people of North Dakota, South Dakota, Montana, and Washington to form constitutions and State governments and to be admitted into the Union on equal footing with the original States, and to make donations of public lands to such States.
(Approved February 22, 1889.) [25 U.S. Statutes at Large, c 180 p 676.] [President's proclamation declaring Washington a State: 26 St. at Large, Proclamations, p 10, Nov. 11, 1889.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That the inhabitants of all that part of the area of the United States now constituting the Territories of Dakota, Montana, and Washington, as at present described, may become the States of North Dakota, South Dakota, Montana, and Washington, respectively, as hereinafter provided.

SEC. 2. The area comprising the Territory of Dakota shall, for the purposes of this act, be divided on the line of the seventh standard parallel produced due west to the western boundary of said Territory; and the delegates elected as hereinafter provided to the constitutional convention in districts north of said parallel shall assemble in convention, at the time prescribed in this act, at the city of Bismarck; and the delegates elected in districts south of said parallel shall, at the same time, assemble in convention at the city of Sioux Falls.

SEC. 3. That all persons who are qualified by the laws of said Territories to vote for representatives to the legislative assemblies thereof, are hereby authorized to vote for and choose delegates to form conventions in said proposed States; and the qualifications for delegates to such conventions shall be such as by the laws of said Territories respectively persons are required to possess to be eligible to the legislative assemblies thereof; and the aforesaid delegates to form said conventions shall be apportioned within the limits of the proposed States, in such districts as may be established as herein provided, in proportion to the population in each of said counties and districts, as near as may be, to be ascertained at the time of making said apportionments by the persons hereinafter authorized to make the same, from the best information obtainable, in each of which districts three delegates shall be elected, but no elector shall vote for more than two persons for delegates to such conventions; that said apportionments shall be made by the governor, the chief-justice, and the secretary of said Territories; and the governors of said Territories shall, by proclamation, order an election of the delegates aforesaid in each of said proposed States, to be held on the Tuesday after the second Monday in May, eighteen hundred and eighty-nine, which proclamation shall be issued on the fifteenth day of April, eighteen hundred and eighty-nine, and such election shall be conducted, the returns made, the results ascertained, and the certificates to persons elected to such convention issued in the same manner as prescribed by the laws of the said Territories regulating elections therein for Delegates to Congress; and the number of votes cast for delegates in each

precinct shall also be returned. The number of delegates to said conventions respectively shall be seventy-five; and all persons resident is said proposed States, who are qualified voters of said Territories as herein provided, shall be entitled to vote upon the election of delegates, and under such rules and regulations as said conventions may prescribe, not in conflict with this act, upon the ratification or rejection of the constitutions.

SEC. 4. That the delegates to the conventions elected as provided for in this act shall meet at the seat of government of each of said Territories, except the delegates elected in South Dakota, who shall meet at the city of Sioux Falls, on the fourth day of July, eighteen hundred and eighty-nine, and, after organization, shall declare, on behalf of the people of said proposed States, that they adopt the Constitution of the United States; whereupon the said conventions shall be, and hereby are, authorized to form constitutions and States governments for said proposed states, respectively. The constitutions shall be republican in form, and make no distinction in civil or political rights on account of race or color, except as to Indians not taxed, and not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence. And said conventions shall provide, by ordinances irrevocable without the consent of the United States and the people of said States;

First. The perfect toleration of religious sentiment shall be secured and that no inhabitant of said States shall ever be molested in person or property on account of his or her mode of religious worship.

Second. That the people inhabiting said proposed States do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States; that the lands belonging to citizens of the United States residing without the said States shall never be taxed at a higher rate than the lands belonging to residents thereof; that no taxes shall be imposed by the States on lands or property therein belonging to or which may hereafter be purchased by the United States or reserved for its use. But nothing herein, or in the ordinances herein provided for, shall preclude the said States from taxing as other lands are taxed any lands owned or held by any Indian who has severed his tribal relations, and has obtained from the United States or from any person a title thereto by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any act of Congress containing a provision exempting the lands thus granted from taxation; but said ordinances shall provide that all such lands shall be exempt from taxation by said States so long and to such extent as such act of Congress may prescribe.

Third. That the debts and liabilities of said Territories shall be assumed and paid by said States, respectively.

Fourth. That provisions shall be made for the establishment and maintenance of systems of public

schools, which shall be open to all the children of said States, and free from sectarian control.

SEC. 5. That the convention which shall assemble at Bismarck shall form a constitution and State government for a State to be known as North Dakota, and the convention which shall assemble at Sioux Falls shall form a constitution and State government for a State to be known as South Dakota: *Provided,* That at the election for delegates to the constitutional convention in South Dakota, as hereinbefore provided, each elector may have written or printed on his ballot the words "For the Sioux Falls constitution," or the words "Against the Sioux Falls constitution," and the votes on this question shall be returned and canvassed in the same manner as for the election provided for in section three of this act; and if a majority of all votes cast on this question shall be "for the Sioux Falls constitution" it shall be the duty of the convention which may assemble at Sioux Falls, as herein provided, to resubmit to the people of South Dakota, for ratification or rejection at the election hereinafter provided for in this act, the constitution framed at Sioux Falls and adopted November third, eighteen hundred and eighty-five, and also the articles and propositions separately submitted at the election, including the question of locating the temporary seat of government, with such changes only as relate to the name and boundary of the proposed State, to the re-apportionment of the judicial and legislative districts, and such amendments as may be necessary in order to comply with the provisions of this act; and if a majority of the votes cast on the ratification or rejection of the constitution shall be for the constitution irrespective of

the articles separately submitted, the State of South Dakota shall be admitted as a State in the Union under said constitution as hereinafter provided; but the archives, records, and books of the Territory of Dakota shall remain at Bismarck, the capital of North Dakota, until an agreement in reference thereto is reached by said States. But if at the election for delegates to the constitutional convention in South Dakota a majority of all the votes case at that election shall be "against the Sioux Falls constitution: then and in that event it shall be the duty of the convention which will assemble at the city of Sioux Falls on the fourth day of July, eighteen hundred and eighty-nine, to proceed to form a constitution and State government as provided in this act the same as if that question had not been submitted to a vote of the people of South Dakota.

SEC. 6. It shall be the duty of the constitutional conventions of North Dakota and South Dakota to appoint a joint commission, to be composed of not less than three members of each convention, whose duty it shall be to assemble at Bismarck, the present seat of government of said Territory, and agree upon an equitable division of all property belonging to the Territory of Dakota, the disposition of all public records, and also adjust and agree upon the amount of the debts and liabilities of the Territory, which shall be assumed and paid by each of the proposed States of North Dakota and South Dakota; and the agreement reached respecting the Territorial debts and liabilities shall be incorporated in the respective constitutions, and each of said States shall obligate itself to pay its proportion of such debts and liabilities the same as if they had been crested by such States respectively.

SEC. 7. If the constitutions formed for both North Dakota and South Dakota shall be rejected by the people at the elections for the ratification or rejection of their respective constitutions as provided for in this act, the Territorial government of Dakota shall continue in existence the same as if this act had not been passed. But if the constitution formed for either North Dakota or South Dakota shall be rejected by the people, that part of the Territory so rejecting its proposed constitution shall continue under the Territorial government of the present Territory of Dakota, but shall, after the State adopting its constitution is admitted into the Union, be called by the name of the Territory of North Dakota or South Dakota, as the case may be: *Provided,* That if either of the proposed States provided for in this act shall reject the constitution which may be submitted for ratification or rejection at the election provided therefore, the governor of the Territory in which such proposed constitution was rejected shall issue his proclamation reconvening the delegates elected to the convention which formed such rejected constitution, fixing the time and place at which said delegates shall assemble; and when so assembled they shall proceed to form another constitution or to amend the rejected constitution, and shall submit such new constitution or amended constitution to the people of the proposed State for ratification or rejection, at such time as said convention may determine; and al the provisions of this act, so far as applicable, shall apply to such convention so reassembled and to the constitution which may be formed, its ratification or rejection, and to the admission of the proposed State.

SEC. 8. That the constitutional convention which may assemble in South Dakota shall provide by ordinance for resubmitting the Sioux Falls constitution of eighteen hundred and eighty-five, after having amended the same as provided in section five of this act, to the people of South Dakota for ratification or rejection at an election to be held therein on the first Tuesday in October, eighteen hundred and eighty-nine; but if said constitutional convention is authorized and required to form a new constitution for South Dakota it shall provide for submitting the same in like manner to the people of South Dakota for ratification or rejection at an election to be held in said proposed State on the said first Tuesday in October. And the constitutional conventions which may assemble in North Dakota, Montana, and Washington shall provide in like manner for submitting the constitutions formed by them to the people of said proposed States, respectively, for ratification or rejection at elections to be held in said proposed States on the said first Tuesday in October. At the elections provided for in this section the qualified voters of said proposed States shall vote directly for or against the proposed constitutions, and for or against any articles or propositions separately submitted. The returns of said elections shall be made to the secretary of each of said Territories, who with the governor and chief-justice thereof, or any two of them, shall canvass the same; and if a majority of the legal votes cast shall be for the constitution the governor shall certify the result to the President of the United States, together with a statement of the votes cast thereon and upon separate articles or propositions and a copy of said constitution, articles, propositions,

and ordinances. And if the constitutions and governments of said proposed States are republican in form, and if all the provisions f this act have been complied with in the formation thereof, is shall be the duty of the President of the United States to issue his proclamation announcing the result of the election in each, and thereupon the proposed States which have adopted constitutions and formed State governments as herein provided shall be deemed admitted by Congress into the Union under and by virtue of this act on an equal footing with the original States from and after the date of said proclamation.

SEC. 9. That until the next general census, or until otherwise provided by law, said States shall be entitled to one Representative in the House of Representatives of the United States, except South Dakota, which shall be entitled to two; and the Representatives to the fifty-first Congress, together with the governors and other officers provided for in said constitutions, may be elected on the same day of the election for the ratification or rejection of the constitutions; and until said State officers are elected and qualified under the provisions of each constitution and the States, respectively, are admitted into the Union, the Territorial officers shall continue to discharge the duties of their respective offices in each of said Territories.

SEC. 10. That upon the admission of each of said States into the Union sections, numbered sixteen and thirty-six in every township of said proposed States, and where such sections, or any parts thereof, have been sold or otherwise disposed of by or under

the authority of any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one-quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted in said States for the support of common schools, such indemnity lands to be selected within said States in such manner as the legislature may provide, with the approval of the Secretary of the Interior: *Provided.* That the sixteenth and thirty-sixth sections embraced in permanent reservations for national purposes shall not, at any time be subject to the grants nor to the indemnity provisions of this act, nor shall any lands embraced in Indian, military or other reservations of any character be subject to the grants or to the indemnity provisions of this act until the reservation shall have been extinguished and such lands be restored to and become a part of, the public domain.

SEC. 11. That all lands herein granted for educational purposes shall be disposed of only at public sale, and at a price not less than ten dollars per acre, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in the support of said schools. But said lands may, under such regulations as the legislatures shall prescribe, be leased for periods of not more than five years, in quantities not exceeding one section to any one person or company; and such land shall not be subject to pre-emption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only.

Reviser's note: Section 11 has at various times been amended by Congress as follows:

(1) August 11, 1921:
An ACT To amend an Act approved February 22, 1889, entitled "An Act to provide for the division of Dakota into two States and to enable the people of North Dakota, South Dakota, Montana, and Washington to form constitutions and State governments, and to be admitted into the Union on an equal footing with the original States, and to make donations of public lands to such State."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That section 11 of the Act entitled "An Act to provide for the division of Dakota into two States and to enable the people of North Dakota, South Dakota, Montana, and Washington to form constitutions and State governments, and to be admitted into the Union on an equal footing with the original States, and to make donations of public lands to such States," approved February 22, 1889, be, and the same hereby is, amended by adding the following: *Provided, however,* That the State may, upon such terms as it may prescribe, grant such easements or rights in such lands as may be acquired in, to, or over the lands of private properties through proceedings in eminent domain: *And provided further,* That any of such granted lands found, after title thereto has vested in the State, to be mineral in character, may be leased for a period not longer than twenty years upon such terms and conditions as the legislature may prescribe. (42 U.S. Statutes at Large, c 61 p 158. Approved, August 11, 1921.)

(2) May 7, 1923:
An ACT To amend section 11 of the Act approved February 22, 1889 (25 Stat. 676), relating to the admission into the Union of the States of North Dakota, South Dakota, Montana, and Washington.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 11 of the Act approved February 22, 1889 (25 Stat. 676), be, and the same is hereby, amended to read as follows:

"That all lands granted by this Act shall be disposed of only at public sale after advertising-tillable lands capable of producing agricultural crops for not less than ten dollars per acre and lands principally valuable for grazing purposes for not less than 5 dollars per acre. Any of the said lands may be exchanged for other lands, public or private, of equal value and as near as may be of equal area, but if any of the said lands are exchanged with the United States such exchange shall be limited to surveyed, nonmineral, unreserved public lands of the United States within the State.

"The said lands may be leased under such regulations as the legislature may prescr8ibe; but leases for grazing and agricultural purposes shall not be for a term longer than five years; mineral leases, including leases for exploration for oil and gas and the extraction thereof, for a term not longer than twenty years; and leases for development of hydroelectric power for a term not longer than fifty years.

"The State may also, upon such terms as it may prescribe, grant such easements or rights in any of the lands granted by this Act, as may be acquired in privately owned lands through proceedings in eminent domain: *Provided, however,* That none of such lands, nor any estate or interest therein, shall ever be disposed of except in pursuance of general laws providing for such disposition, nor unless the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been pain or safely secured to the State.

"With the exception of the lands granted for public buildings, the proceeds from the sale and other permanent disposition of any of the said lands and from every part

thereof, shall constitute permanent funds for the support and maintenance of the public schools and the various State institutions for which the lands have been granted. Rentals on leased lands, interest on deferred payments on lands sold, interest on funds arising from these lands, and all other actual income, shall be available for the maintenance and support of such schools and institutions. Any State may, however, in its discretion, add a portion of the annual income to the permanent funds.

"The lands hereby granted shall not be subject to preemption, homestead entry, or any other entry under the land laws of the United States whether surveyed, but shall be reserved for the purposes for which they have been granted."

SEC. 2. Anything in the said Act approved February 22, 1889, inconsistent with the provisions of his At is hereby repealed. [47 U.S. Statutes at Large c 172 p 150. Approved, May 7, 1932.]

(3) June 25, 1938:

AN ACT to increase the period for which leases may be made for grazing and agricultural purposes of public lands donated to the States of North Dakota, South Dakota, Montana, and Washington by the Act of February 22, 1889, as amended.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That so much of the second paragraph of section 11 of the Act relating to the admission into the Union of the States of North Dakota, South Dakota, Montana, and Washington, approved February 22, 1889, as amended, as reads "but leases for grazing and agricultural purposes shall not be for a term longer than five years", is amended to read as follows: "but leases for grazing and agricultural purposes shall not be for a term longer than ten years". [52 U.S. Statutes at Large c 700 p 1198. Approved, June 25, 1938.]

(4) April 13, 1948:

AN ACT to authorize the States of Montana, North Dakota, South Dakota, and Washington to lease their State lands for production of minerals, including leases for exploration of oil, gas, and other hydrocarbons and the extraction thereof, for such term of years and on such conditions as may be from time to time provided by the legislatures of the respective States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled: That the second paragraph of Section 11 of the Act relating to the admission into the Union of the States of North Dakota, South Dakota, Montana, and Washington, approved February 22, 1889, as amended, is amended to read as follows: "Except as otherwise provided herein, the said lands may be leased under such regulations as the legislature may prescribe. Leases for the production of minerals, including leases for exploration for oil, gas, and other hydrocarbons and the extraction thereof, shall be for such term of years and on such conditions as may be from time to time provided by the legislatures of the respective States; leases for grazing and agricultural purposes shall be for a term not longer than ten years; and leases for development of hydroelectric power shall be for a term not longer than fifty years." [62 U.S. Statutes at Large c 183 p 170. Approved April 13, 1948.]

(5) June 28, 1952:

AN ACT to authorize each of the States of North Dakota, South Dakota, and Washington to pool moneys derived from lands granted to it for public schools and various State institutions.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That the fourth paragraph of section 11 of the Act relating to the admission into the Union of the States of North Dakota, South Dakota, Montana, and Washington, approved

February 22, 1889, as amended (47 Stat. 151), is amended by adding at the end thereof the following: "Notwithstanding the foregoing provisions of this section, each of the States of North Dakota, South Dakota, and Washington may pool the moneys received by it from oil and gas and other mineral leasing of said lands. The moneys so pooled shall be apportioned among the public schools and the various State institutions in such manner that the public schools and each of such institutions shall receive an amount which bears the same ratio to the total amount apportioned as the number of acres (including any that may have been disposed of) granted for such public schools or for such institutions bears to the total number of acres (including any that may have been disposed of) granted by this Act. Not less than 50 per centum of each amount shall be covered into the appropriate permanent fund." [66 Statutes at Large c 480 p 283. Approved June 28, 1952.]

(6) May 31, 1962:

AN ACT to amend the Act admitting the State of Washington into the Union in order to authorize the use of funds from the disposition of certain lands for the construction of State charitable, educational, penal, or reformatory institutions.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled: That the Act entitled "An Act to provide fro the division of Dakota into two States and to enable the people of North Dakota, South Dakota, Montana, and Washington to form constitutions and State governments and to be admitted into the Union on an equal footing with the original States and to make donations of public lands to such States", approved February 22, 1889 (25 Stat. 676, as amended), is amended by inserting before the period at the end of the first sentence in the fourth paragraph of section 11 a comma and the following: "except that proceeds from the sale and other permanent disposition of the two hundred thousand acres

granted to the State of Washington for State charitable, educational, penal, and reformatory institutions may be used by such State for the construction of any such institution". [Public Law 87-473. 76 U.S. Statues of Large p 91. Approved May 31, 1962.]

(7) June 30, 1967:

AN ACT to authorize the States of North Dakota, South Dakota, Montana, and Washington to use the income from certain lands for the construction of facilities for State charitable, educational, penal, and reformatory institutions.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That the second sentence of the fourth paragraph of section 11 of the Act entitled "An Act to provide for the division of Dakota into two separate States and to enable the people of North Dakota, South Dakota, Montana, and Washington to form constitutions and State governments and to be admitted into the Union on an equal footing with the original States, and to make donations of public lands to such States", approved February 22, 1889 (25 Stat. 676), as amended, is amended to read as follows: "Rentals on leased land, proceeds from the sale of timber and other crops, interest on deferred payments on land sold, interest on funds arriving from these lands, and all other actual income, shall be available for the acquisition and construction of facilities, including the retirement of bonds authorized by law for such purposes, and for the maintenance and support of such schools and institutions." [Public Law 90-41. 81 U.S. Statutes at Large p 106. Approved June 30, 1967.]

(8) October 16, 1970:

AN ACT to amend section 11 of the Act approved February 22, 1889 (25 Stat. 676) as amended by the Act of May 7, 1932 (47 Stat. 150), and as amended by the Act of April 13, 1948 (62 Stat. 170) relating to the admission to the

Union of the States of North Dakota, South Dakota, Montana, and Washington, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That the second sentence of the first paragraph of section 11 of the Act approved February 22, 1889 (25 Stat. 676), as amended by the Act of May 7, 1932 (47 Stat. 150), is hereby amended to read as follows:

"Any of the said lands may be exchanged for other lands, public or private, of equal value and as near as may be of equal area, but if any of the said lands are exchanged with the United States such exchange shall be limited to Federal lands that are surveyed, nonmineral, unreserved public lands within the State, or are reserved public lands within the State that are subject to exchange under the laws governing the administration of such Federal reserved public lands."

and that a new paragraph be added immediately following the above, as follows:

"All exchanges heretofore made under section 11 of the Act approved February 22, 1889 (25 Stat. 676), as amended by the Act approved May 7, 1932 (47 Stat. 150), for served public lands of the United States that were subject to exchange under law pursuant to which they were being administered and the requirements thereof have been met, are hereby approved to the same extent as though the lands exchanged were unreserved public lands."

and that the present paragraph 2 of section 11 be amended to read as follows:

"The said lands may be leased under such regulations as the legislature may prescribe." [Public Law 91-463. 84 U.S. Statutes at Large p 987. Approved October 16, 1970.]

SEC. 12. That upon the admission of each of said States into the Union, in accordance with the provisions of this act, fifty sections of the unappropriated public lands

within said States, to be selected and located in legal subdivisions as provided in section ten of this act, shall be, and are hereby, granted to said States for the purpose of erecting public buildings at the capital of said States for legislative, executive, and judicial purposes.

Reviser's note: Section 12 has been amended by Congress as follows:

AN ACT to amend section 12 of the Act approved February 22, 1889 (25 Stat. 676) relating to the admission into the Union of the States of North Dakota, South Dakota, Montana, and Washington, by providing for the use of public lands granted to the States therein for the purpose of construction, reconstruction, repair, renovation, furnishings, equipment, or other permanent improvement of public buildings at the capital of said States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That section 12 of the Act relating to the admission into the Union of the States of North Dakota, South Dakota, Montana, and Washington, approved February 22, 1889, is amended to read as follows:

"That upon the admission of each of said States into the Union, in accordance with the provisions of this act, fifty sections of unappropriated public lands within such States, to be selected and located in legal subdivisions as provided in section 10 of this Act, shall be, and are hereby, granted to said States for public buildings at the capital of said States for legislative, executive, and judicial purposes, including construction, reconstruction, repair, renovation, furnishings, equipment, and any other permanent improvement of such buildings and the acquisition of necessary land for such buildings, and the payment of principal and interest on bonds issued for any of the above purposes."

SEC. 2. This Act shall take effect as of February 22, 1889. [Public Laws 85-6. 71 U.S. Statutes at large p 5. Approved February 26, 1957.]

SEC. 13. That five per centum of the proceeds of the sales of public lands lying within said States which shall be sold by the United States subsequent to the admission of said States into the Union, after deducting all the expenses incident to the same, shall be paid to the said States, to be used as a permanent fund, the interest of which only shall be expended for the support of common schools within said States, respectively.

SEC. 14. That the lands granted to the Territories of Dakota and Montana by the act of February eighteenth, eighteen hundred and eighty-one, entitled "An act to grant lands to Dakota, Montana, Arizona, Idaho, and Wyoming for university purposes," are hereby vested in the States of South Dakota, North Dakota, and Montana, respectively, if such States are admitted into the Union, as provided in this act, to the extent of the full quantity of seventy-two sections to each of said States, and any portion of said lands that may not have been selected by either of said Territories of Dakota or Montana may be selected by the respective States aforesaid; but said act of February eighteenth, eighteen hundred and eighty-one, shall be so amended as to provide that none of said lands shall be sold for less than ten dollars per acre, and the proceeds shall constitute a permanent fund to be safely invested and held by said States severally, and the income thereof be used exclusively for university purposes. And such quantity of the lands authorized for the fourth section of the act of July seventeenth, eighteen hundred and fifty-four, to be reserved for university purposes in the Territory of Washington, as, together with the lands confirmed to the vendees of the Territory by the act of March fourteenth, eighteen hundred and sixty-four, will make the full quantity of seventy-two entire sections, are hereby granted in like manner to the State of Washington for the purposes of a university in said State. None of the lands granted in this section shall be sold at less

than ten dollars per acre; but said lands may be leased in the same manner as provided in section eleven of this act. The schools, colleges, and universities provided for in this act shall forever remain under the exclusive control of the said States, respectively, and no part of the proceeds arising from the sale or disposal of any lands herein granted for educational purposes shall be used for the support of any sectarian or denominational school, college, or university. The section of land granted by the act of June sixteenth, eighteen hundred and eighty, to the Territory of Dakota, for an asylum for the insane shall, upon the admission of said State of South Dakota into the Union, become the property of said State.

SEC. 15. That so much of the lands belonging to the United States as have been acquired and set apart for the purpose mentioned in "An act appropriating money for the erection of a penitentiary in the Territory of Dakota," approved March second, eighteen hundred and eighty-one, together with the building thereon, be, and the same is hereby, granted, together with any unexpended balances of the moneys appropriated therefore by said act, to said State of South Dakota, for the purposes therein designated; and the States of North Dakota and Washington shall, respectively, have like grants for the same purpose, and subject to like terms and conditions as provided in said act of March second, eighteen hundred and eighty-one, for the Territory of Dakota. The penitentiary at Deer Lodge City, Montana, and all lands connected therewith and set apart and reserved therefore, are hereby granted to the State of Montana.

SEC. 16. That ninety thousand acres of land, to be selected and located as provided in section 10 of this act, are hereby granted to each of said States, except to the State of South Dakota, to which one hundred and twenty thousand acres are granted, for the use and support of agricultural

colleges in said states, as provided in the acts of Congress making donations of lands for such purpose.

SEC. 17. That in lieu of the grant of land for purposes of internal improvement made to new States by the eighth section of the act of September fourth, eighteen hundred and forty-one, which act is hereby repealed as to the States provided for by this act, and in lieu of any claim or demand by the said States, or either of them, under the act of September twenty-eighth, eighteen hundred and fifty, and section twenty-four hundred and seventy-nine of the Revised Statutes, making a grant of swamp and overflowed lands to certain States, which grant it is hereby declared is not extended to the States provided for in this act, and in lieu of any grant of saline lands to said States, the following grants of land are hereby made, to wit:

To the State of South Dakota: For the school of mines, forty thousand acres; for the reform school, forty thousand acres; for the deaf and dumb asylum, forty thousand acres; for the agricultural college, forty thousand acres; for the university, forty thousand acres; for State normal schools, eighty thousand acres; for public buildings at the capital of said State, fifty thousand acres, and for such other educational and charitable purposes as the legislature of said State may determine, one hundred and seventy thousand acres; in all five hundred thousand acres.

To the State of North Dakota a like quantity of land as in this section granted to the State of South Dakota, and to be for like purposes, and in like proportion as far as practicable.

To the State of Montana: For the establishment and maintenance of a school of mines, one hundred thousand acres, for State Norman schools, one hundred thousand acres; for agricultural colleges, in addition to the grant hereinbefore made for that purpose, fifty thousand acres; for the establishment of a State reform school, fifty thousand acres; for the establishment of a deaf and dumb asylum, fifty

thousand acres; for public buildings at the capital of the State, n addition to the grant hereinbefore made for that purpose, one hundred and fifty thousand acres.

To the State of Washington: For the establishment and maintenance of a scientific school, one hundred thousand acres; for State normal schools, one hundred thousand acres; for public buildings at the State capital, in addition to the grant hereinbefore made for that purpose, one hundred thousand acres; for State charitable, educational, penal, and reformatory institutions, two hundred thousand acres.

That the States provided for in this act shall not be entitled to any further or other grants of land for any purpose than as expressly provided in this act. And the lands granted by this section shall be held, appropriated, and disposed of exclusively for the purposes herein mentioned, in such manner as the legislatures of the respective States may severally provide.

SEC. 18. That all mineral lands shall be exempted from the grants made by this act. But if sections sixteen and thirty-six, or any subdivisions or portion of any smallest subdivision thereof in any township shall be found by the Department of the Interior to be mineral lands, said States are hereby authorized and empowered to select, in legal subdivisions, an equal quantity of other unappropriated lands in said States, in lieu thereof, for the use and the benefit of the common schools of said States.

SEC. 19. That all lands granted in quantity or as indemnity by this act shall be selected, under the direction of the Secretary of the Interior, from the surveyed, unreserved, and unappropriated public lands of the United States within the limits of the respective States entitled thereto. And there shall be deducted from the number of acres of land donated by this act for specific objects to said

States the number of acres in each heretofore donated by Congress to said Territories for similar objects.

SEC. 20. That the sum of twenty thousand dollars, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to each of said Territories for defraying the expenses of the said conventions, except to Dakota, for which the sum of forty thousand dollars is so appropriated, twenty thousand dollars each for South Dakota and North Dakota, and for the payment of the members thereof, under the same rules and regulations and at the same rates as are now provided by law for the payment of the Territorial legislatures. Any money hereby appropriated not necessary for such purpose shall be covered into the Treasury of the United States.

SEC. 21. That each of said States, when admitted as aforesaid, shall constitute one judicial district, the names thereof to be the same as the names of the States, respectively; and the circuit and district courts therefore shall e held at the capital of such State for the time being, and each of said districts shall, for judicial purposes, until otherwise provided, be attached to the eighth judicial circuit, except Washington and Montana, which shall be attached to the ninth judicial circuit. There shall be appointed for each of said districts one district judge, one United States attorney, and one United States marshal. The judge of each of said districts shall receive a yearly salary of three thousand five hundred dollars, payable in four equal installments, on the first days of January, April, July, and October of each year, and shall reside in the district. There shall be appointed clerks of said courts in each district, who shall keep their offices at the capital of said State. The regular terms of said courts shall be held in each district, at the place aforesaid, on the first Monday in April and the first Monday in November of each year, and only one grand

jury and one petit jury shall be summoned in both said circuit and district courts. The circuit and district courts for each of said districts, and the judges thereof, respectively, shall possess the same powers and jurisdiction, and perform the same duties required to be performed by the other circuit and district courts and judges of the United States, and shall be governed by the same laws and regulations. The Marshal, district attorney, and clerks of the circuit and district courts of each of said districts, and all other officers and persons performing duties in the administration of justice therein, shall severally possess the powers and perform the duties lawfully possessed and required to be performed by similar officers in other districts of the United States; and shall, for the services they may perform, receive the fees and compensation allowed by law to other similar officers and persons performing similar duties in the State of Nebraska.

SEC. 22. That all cases of appeal or writ of error heretofore prosecuted and now pending in the Supreme Court of the United States upon any record from the supreme court of either of the Territories mentioned in this act, or that may hereafter lawfully be prosecuted upon any record from either of said courts may be heard and determined by said Supreme Court of the United States. And the mandate off execution or of further proceedings shall be directed by the Supreme Court of the United States to the circuit or district court hereby established within the State succeeding the Territory from which such record is or may be pending, or to the supreme court of such State, as the nature of the case may require: *Provided*, That the mandate of execution or of further proceedings shall, in cases arising in the Territory of Dakota, be directed by the Supreme Court of the United States to the circuit or district court of the district of South Dakota, or to the supreme court of the State of South Dakota, or to the circuit or district court of the district of North Dakota, or to the supreme court of

the State of North Dakota, or to the supreme court of the Territory of North Dakota, as the nature of the case may require. And each of the circuit, district, and State courts, herein named, shall, respectively, be the successor of the supreme court of the Territory, as to all such cases arising within the limits embraced within the jurisdiction of such courts respectively with full power to proceed with the same, and aware mesne or final process therein; an that from all judgments and decrees of the supreme court of either of the Territories mentioned in this act, in any case arising within the limits of any of the proposed States prior to admission, the parties to such judgment shall have the same right to prosecute appeals and writs of error to the Supreme Court of the United States as they shall have had by law prior to the admission of said State into the Union.

SEC. 23. That in respect to all cases, proceedings, and matters now pending in the supreme or district courts of either of the Territories mentioned in this act at the time of the admission into the Union of either of the States mentioned in this act, and arising within the limits of any such State, whereof the circuit or district courts by this act established might have had jurisdiction under the laws of the United States had such courts existed at the time of the commencement of such cases, the said circuit and district courts, respectively, shall be the successors of said supreme and district courts of said Territory; and in respect to all other cases, proceedings and matters pending in the supreme or district courts of any of the Territories mentioned in this act at the time of the admission of such Territory into the Union, arising within the limits of said proposed State, the courts established by such State shall, respectively, be the successors of said supreme and district Territorial courts; and all the files, records, indictments, and proceedings relating to any such cases, shall be transferred to such circuit, district, and State courts, respectively, and the same shall be proceeded with therein in due course of

law; but no writ, action, indictment, cause or proceeding now pending, or that prior to the admission of any of the States mentioned in this act, shall be pending in any Territorial court in any of the Territories mentioned in this act, shall abate by the admission of any such State into the Union, but the same shall be transferred and proceeded with in the proper United States circuit, district or State court, as the case may be: *Provided, however,* That in all civil actions, causes, and proceedings, in which the United States is not a party, transfers shall not be made to the circuit and district courts of the United States, except upon written request of one of the parties to such action or proceeding filed in the proper court; and in the absence of such request such cases shall be proceeded with in the proper State courts.

SEC. 24. That the constitutional conventions may, by ordinance, provide for the election of officers for full State governments, including members of the legislatures and Representatives in the fifty-first Congress; but said State governments shall remain in abeyance until the States shall be admitted into the Union, respectively, as provided in this act. In case the constitution of any of said proposed States shall be ratified by the people, but not otherwise, the legislature thereof may assemble, organize, and elect two senators of the United States; and the governor and secretary of state of such proposed State shall certify the election of the Senators and Representatives in the manner required by law; and when such State is admitted into the Union, the Senators and Representatives shall be entitled to be admitted to seats in Congress, and to all the rights and privileges of Senators and Representatives of other States in the Congress of the United States; and the officers of the State governments formed in pursuance of said constitutions, as provided by the constitutional conventions, shall proceed to exercise all the functions of such State officers; and all laws in force made by said Territories, at the

time of their admission into the Union, shall be in force in said States, except as modified or changed by this act or by the constitutions of the States, respectively.

SEC. 25. That all acts or parts of acts in conflict with the provisions of this act, whether passed by the legislatures of said Territories or by Congress, are hereby repealed.

Approved February 22, 1889 [25 U.S. Statutes at Large, c 180 p 676.]

TREATY WITH GREAT BRITAIN OF LIMITS WESTWARD OF THE ROCKY MOUNTAINS

Concinded June 15th, 1846

Proclamation by the President of the United States, August 5th, 1846.

WHEREAS, a treaty between the United States of America and her majesty, the queen on the United Kingdom of Great Britain and Ireland, was concluded and signed by their plenipotentiaries at Washington, on the fifteenth day of June last, which treaty is word for word, as follows: –

The United States of America and her majesty, the queen of the United Kingdom and Great Britain and Ireland, deeming it to be desirable for the future welfare of both countries, that the state of doubt and uncertainty which has hitherto prevailed respecting the sovereignty and government of the territory on the north-west coast of America, lying westward of the Rocky or Stony Mountains, should be finally terminated by an amicable compromise of the right mutually asserted by the two parties, over the said territory, have respectively named plenipotentiaries to treat and agree concerning the terms of such settlement; that is to say: The president of the United States of America has, on his part, furnished with full powers James Buchannan, secretary of state of the United States, and her majesty, the queen on the United Kingdom of Great Britain and Ireland, has, on her part, appointed the Right Honorable Richard

Pakenham, a member of her majesty's most honorable privy council, and her majesty's envoy extraordinary and minister plenipotentiary to the United States; who, after having communicated unto each other their respective full powers, found in good and due form, have agreed upon and concluded the following articles:--

ARTICLE I.

From the point on the forty-ninth parallel of north latitude, where the boundary laid down in existing treaties and conventions between the United States and Great Britain terminates, the line of boundary between the territories of the United States, and those of her Britannic majesty, shall be continued westward along the said forty-ninth parallel of north latitude to the middle of the channel which separates the Continent from Vancouver's Island, and thence southerly, through the middle of the said channel, and of Fuca's Straits to the Pacific ocean; *Provided, however,* that the navigation of the whole of the said channel and straits, south of the forty-ninth parallel of north latitude, remain free and open to both parties.

ARTICLE II.

From the point at which the forty-ninth parallel of north latitude shall be found to intersect the great northern branch of the Columbia River, the navigation of the said branch shall be free and open to the Hudson's Bay Company, and to all British subjects trading with the same, to the point where the said branch meets the main stream of the Columbia, and

thence down the said main stream to the ocean, with free access into and through the said river or rivers, it being understood that all the usual portages along the line thus described shall, in like manner, be free and open. In navigating the said river or rivers, British subjects, with their goods and produce shall be treated on the same footing as citizens of the United States; it being, however, always understood, that nothing in this article shall be construed as preventing, or intended to prevent, the government of the United States from making any regulations respecting the navigation of the said river or rivers, not inconsistent with the present treaty.

ARTICLE III.

In the further appropriation of the territory south of the forty-ninth parallel of north latitude, as provided in the first article of this treaty, the possessory rights of the Hudson's Bay Company, and of all British subjects who may be already in the occupation of land or other property lawfully acquired within the said territory, shall be respected.

ARTICLE IV.

The farms, lands, and other property of every description belonging to the Puget Sound's Agricultural Company, on the north side of the Columbia River, shall be confirmed to the said company. In case, however, the situation of those farms and lands should be considered by the United States to be of public and political importance, and the United States government should signify a desire to obtain

possession of the whole, or of any part thereof, the property so required shall be transferred to the said government, at a proper valuation, to be agreed upon between the parties.

ARTICLE V.

The present treaty shall be ratified by the president of the United States, by and with the advice and consent of the senate thereof, and by her Britannic majesty; and the ratifications shall be exchanged at London, at the expiration of six months from the date hereof, or sooner if possible.

In witness whereof, the respective plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done at Washington, the fifteenth day of June, in the year of our Lord one thousand eight hundred and forty-six.

JAMES BUCHANAN, [L. S.]
RICHARD PAKENHAM, [L. S.]

And whereas, the said treaty has been duly ratified on both parts, and the respective ratifications of the same were exchanged at London, on the seventeenth ultimo, by Louis McLane, envoy extraordinary and minister plenipotentiary of the United States, and Viscount Palmerston, her Britannic majesty's principal secretary of state for foreign affairs, on the part of their respective governments, –

Now, therefore, be in known, that I, JAMES K. POLK, president of the United States of America, have caused the said treaty to be made public to the end that the same, and every clause and article thereof, may e observed and fulfilled with good faith by the United States and the citizens thereof.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington, this fifth day of August, in the year of our Lord one thousand eight hundred and forty-six, and of the independence of the United States, the seventy-first.

JAMES K. POLK.

By the President:

JAMES BUCHANAN, Secretary of State.

ORGANIC ACT

Reviser's note: The original organic act to establish the territorial government of Washington is set forth herein. Note however that the organic act was completely revised in the 1873 United States Revised Statutes which was enacted by Congress in 1874. The 1873 United States Revised Statutes contained a construction section (Title 74, section 5596) which has been construed by the United States Supreme Court (Dwight v. Merrit, 140 U.S. 213, 11 S.Ct. 768, 35 L.Ed. 45) as abrogating or repealing all prior statutes on the same subject as those revised. As the twenty-one sections of the original organic act were rewritten and combined with the organic acts of other territories the disposition of the original sections into the 1873 United States Revised Statutes cannot be traced with absolute accuracy. A schedule of the disposition of the original organic act sections based on the audit contained in the United States Revised Statutes of 1878, is published herein following section 21 of the organic act.

AN ACT TO ESTABLISH THE TERRITORIAL GOVERNMENT OF WASHINGTON.

(Approved March 2, 1953.)[10 U.S. Statutes at Large, c 90 p 172.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this act, all that portion of Oregon Territory lying and being south of the forty-ninth degree of north latitude, and north of the middle of the main channel of the Columbia River, from its mouth to where the forty-

sixth degree of north latitude crosses said river, near Fort Wallawalla, thence with said forty-sixth degree of latitude to the summit of the Rocky Mountains, be organized into an constitute a temporary government by the name of the Territory of Washington: *Provided*, That nothing in this act contained shall be construed to affect the authority of the government of the United States to make any regulation respecting the Indians of said Territory, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent to the government to make if this act had never been passed: *Provided further*, That the title to the land, not exceeding six hundred and forty acres, now occupied as missionary stations among the Indian tribes in said Territory, or that may have been so occupied as missionary stations prior to the passage of the act establishing the Territorial government of Oregon, together with the improvements thereon, be, and is hereby confirmed and established to the several religious societies to which said missionary stations respectively belong.

SEC. 2. And be it further enacted, That the executive power and authority in and over said Territory of Washington shall be vested in a governor, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the President of the United States. The governor shall reside in said Territory, shall be the commander-in-chief of the militia thereof, shall perform the duties and receive the emoluments of Superintendent of Indian Affairs; he may grant pardons and remit fines and forfeitures for offenses against the laws of said Territory, and respites for

offenses against the laws of the United States until the decision of the President can be made known thereon; he shall commission all officers who shall be appointed to office under the laws of the said Territory, where, by law, such commissions shall be required, and shall take care that the laws be faithfully executed.

SEC. 3. And be it further enacted, That there shall be a Secretary of said Territory, who shall reside therein, and hold his office for four years, unless sooner removed by the President of the United States; he shall record and preserve all the laws and proceedings of the Legislative Assembly hereinafter constituted, and all the acts and proceedings of the Governor in his Executive department; he shall transmit one copy of the laws and journals of the Legislative Assembly within thirty days after the end of each session, and one copy of the executive proceedings and official correspondence semi-annually, on the first days of January and July in each year, to the President of the United States, and two copies of the laws to the President of the Senate and to the Speaker of the House of Representatives, for the us of Congress. And in case of the death, removal, resignation, or absence of the Governor from that Territory, the Secretary shall be, and he is hereby, authorized and required to execute and perform all the powers and duties of the Governor during such vacancy or absence, or until another Governor shall be duly appointed and qualified to fill such vacancy.

SEC. 4. And be it further enacted, That the Legislative power and authority of said Territory shall be vested in a Legislative Assembly, which shall consist

of a council and House of Representatives. The Council shall consist of nine members, having the qualifications of voters, as hereinafter prescribed, whose term of service shall continue three years. Immediately after they shall be assembled, in consequence of their first election, they shall be divided as equally as may be into three classes. The seats of the members of Council of the first class, shall be vacated at the expiration of the first year, of the second class at the expiration of the second year, and of the third class at the expiration of the third year, so that one third may be chosen every year; and if vacancies happen, by resignation or otherwise, the same shall be filled at the next ensuing election. The House of Representatives shall, at its first session, consist of eighteen members, possession the same qualifications as prescribed for members of the Council, and whose term of service shall continue one year. The number of representatives may be increased by the Legislative Assembly, from time to time, in proportion to the increase of qualified voters: *Provided,* That the whole number shall never exceed thirty. An apportionment shall be made, as nearly equal as practicable, among the several counties or districts, for the election of the Council and Representatives, giving to each section of the Territory representation in the ratio of its qualified voters, as nearly as may be. And the members of the Council and of the House of Representatives shall reside in, and be inhabitants of, the district or county or counties, for which they may be elected, respectively. Previous to the first election, the Governor shall cause a census or enumeration of the inhabitants and qualified voters of the several counties and districts of the Territory to be taken, by such persons, and in such mode, as the

Governor shall designate and appoint; and the persons so appointed shall receive a reasonable compensation therefor. And the first election shall beheld at such time and places, and by conducted in such manner, both as to the persons who shall superintend such election and the returns thereof, as the Governor shall appoint and direct; and he shall at the same time declare the number of members of the Council and House of Representatives to which each of the counties or districts shall be entitled under this act; and the Governor shall, by his proclamation, give at least sixty days' previous notice of such apportionment, and of the time, places, and manner of holding such election. The persons having the highest number of legal votes in each of said council districts for members of the Council shall be declared by the Governor to be duly elected to the Council, and the persons having the highest number of legal votes for the House of Representatives shall be declared by the Governor to be duly elected members of the said House; *Provided,* That in cases two or more person voted for shall have an equal number of vote, and in case of a vacancy shall otherwise occur in either branch of the Legislative Assembly, the Governor shall or a new election; and the person thus elected to the Legislative assembly shall meet at such place, and on such day, within ninety days after such elections, as the Governor shall appoint. But thereafter the time, place, and manner of holding and conducting all elections by the people, and the apportioning the representation in the several counties or districts to the council and House of Representatives, according to the number of qualified voters, shall be prescribed by law, as well as the day of the commencement of the regular session of the

Legislative Assembly; *Provided,* That no session in any one year shall exceed the term of sixty days, except the first session, which shall not exceed one hundred days.

SEC. 5. And be it further enacted. That every white male inhabitant above the age of twenty-one years, who shall have been a resident of the said Territory at the time of the passage of this act, and shall possess the qualifications hereinafter prescribed, shall be entitled to vote at the first election, and shall be eligible to any office within the said Territory; but the qualifications of voters and of holding office at all subsequent elections shall be such as shall be prescribed by the Legislative Assembly; *Provided,* That the right of suffrage and of holding office shall be exercised only by citizens of the United States above the age of twenty-one years, and those above that age who shall have declared on oath their intention to become such, and shall have taken an oath to support the Constitution of the United States and the provisions of this act: *And provided further,* That no officer, soldier, seaman, mariner, or other person in the army or navy of the United States, or attached to troops in the service of the United States, shall be allowed to vote in said Territory, by reason of being on service therein, unless said Territory is, and has been for the period of six months, his permanent domicil: *Provided further,* That no person belonging to the army or navy of the United States shall ever be elected to or hold any civil office or appointment in said Territory.

SEC. 6. And be it further enacted, That the Legislative power of the Territory shall extend to all rightful subjects of legislation not inconsistent with the

Constitution and laws of the United States. But no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States, nor shall the lands or other property of nonresidents be taxed higher than the lands or other property of residents. Al the laws passed by the Legislative Assembly shall be submitted to the Congress of the United States, and if disapproved, shall be null and of no effect: *Provided,* That nothing in this act shall be construed to give power to incorporate a bank or any institution with banking powers, or to borrow money in the name of the Territory, or to pledge the faith of the people of the same for any loan whatever, directly or indirectly. No charter granting any privileges of making, issuing, or putting into circulation any notes or bills in the likeness of bank-notes, or any bonds, scrip, drafts, bills of exchange, or obligations, or granting any other banking powers or privileges, shall be passed by the Legislative Assembly; nor shall the establishment of any branch or agency of any such corporation, derived from other authority, be allowed in said Territory; nor shall said Legislative Assembly authorize the issue of any obligation, scrip, or evidence of debt, by said Territory, in any mode or manner whatever, except certificates for service to said Territory. And all such laws, or any law or laws inconsistent with the provisions of this act, shall be utterly null and void. And the taxes shall be equal and uniform; and no distinctions shall be made in the assessments between different kinds of property, but the assessments shall be according to the value thereof. To avoid improper influences, which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall

embrace but one object, and that shall be expressed in the title.

SEC. 7. And be it further enacted. That all township, district, and county officers not herein otherwise provided for, shall be appointed or elected in such manner as shall be provided by the Legislative Assembly of the Territory of Washington.

Sec. 8. And be it further enacted. That no member of the Legislative Assembly shall hold or be appointed to any office which shall have been created, or the salary or emoluments of which shall have been increased while he was a member, during the term for which he was elected and for one year after the expiration of such term; but this restriction shall not be applicable to members of the first Legislative Assembly; and no person holding a commission or appointment under the United States shall be a member of the Legislative Assembly, or shall hold any office under the government of said Territory.

Sec. 9. And be it further enacted. That the judicial power of said Territory shall be vested in a supreme court, district courts, probate courts, and in justices of the peace. The supreme court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and who shall hold a term of at the seat of government of said Territory annually, and they shall hold their offices during the period of four years, and until their successors shall be appointed and qualified. The said Territory shall be divided into three judicial districts, and a district court shall be held in each of said districts by one of the

justices of the supreme court, at such times and places as may be prescribed by law; and the said judges shall,, after their appointments, respectively reside in the districts which shall be assigned them. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts and of justices of the peace, shall be as limited by law: *Provided,* That justices of the peach shall not have jurisdiction of any case in which the title to land shall in any wise come in question, or where the debt or damages claimed shall exceed one hundred dollars; and the supreme and district courts, respectively shall possess chancery as well as common-law jurisdiction. Each district court, or the judge thereof, shall appoint its clerk, who shall also be the register in chancery, and shall keep his office at the place where the court may be held. Writs of error, bills or exception, and appeals, shall be allowed in all cases from the final decisions of said district court to the supreme court under such regulations as may be prescribed by law; but in no case removed to the supreme court shall trial by jury be allowed in said court. The supreme court, or the justices thereof, shall appoint its own clerk, and every clerk shall hold his office at the pleasure of the court for which he shall have been appointed. Writs or error, and appeals from the final decisions of said supreme court, shall be allowed, and may be taken to the Supreme Court of the United States, in the same manner and under the same regulations as from the circuit court of the United States, where the value of the property, or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witness, shall exceed two thousand dollars, and in all cases, where the constitution of the

United States, or acts of Congress, or a treaty of the United States, is brought in question; and each of the said district courts shall have and exercise the same jurisdiction in all cases arising under the constitution of the United States and the laws of the said Territory, as is vested in the circuit and district courts of the United States; writs or error and appeal in all such cases shall be made to the supreme court of said Territory the same as in other cases. Writs or error, and appeals from the final decisions of said supreme court, shall be allowed and may be taken to the supreme court of the United States in the same manner as from the circuit courts of the United States, where the value of the property, or the amount in controversy, shall exceed two thousand dollars, and each of said district courts shall have and exercise the same jurisdiction, in all cases arising under the constitution and laws of the United States, as is vested in the circuit and district courts of the United States; and also of all cases arising under the laws of said Territory, and otherwise. The said clerk shall receive in all such cases the same fees which the clerks of the district courts of the Territory of Oregon receive for similar services.

SEC. 10. And be it further enacted, That there shall be appointed an attorney for said Territory, who shall continue in office for four years and until his successor shall be appointed and qualified, unless sooner removed by the President, and who shall receive the same fees and salary as is provided by law for the attorney of the United States for the Territory of Oregon. There shall also be a marshal for the Territory appointed, who shall hold his office for four years and until his successor shall be appointed and qualified,

unless sooner removed by he President, and who shall execute all processes issuing from the said courts when exercising their jurisdiction as circuit and district courts of the United States; he shall perform the duties, be subject to the same regulation and penalties, and be entitled to the same fees, as are provided by law for the marshal of the Territory of Oregon, and shall, in addition, be paid the sum of two hundred dollars annually as a compensation for extra services.

Sec. 11. And be it further enacted. That the governor, secretary, chief justice, and associate justices, attorney, and marshal, shall be nominated, and, by and with the advice and consent of the senate, appointed by the President of the United States. The governor and secretary to be appointed as aforesaid shall, before they act as such, respectively take an oath or affirmation before the district judge, or some justice of the peace in the limits of said Territory duly authorized to administer oaths and affirmations by the laws in force therein, or before the chief justice or some associate justice of the supreme court of the United States, to support the constitution of the United States, and faithfully to discharge the duties of their respective offices, which said oaths, when so taken, shall be certified by the person before whom the same shall have been taken; and such certificates shall be received and recorded by the said Secretary among the executive proceedings; and the Chief Justice and Associate Justices, and all other civil officers in said Territory, before they act as such, shall take a like oath or affirmation before the said Governor or Secretary, or some judge or justice of the peace of the Territory who may be duly commissioned and qualified, which said

oath or affirmation shall be certified and transmitted, by the person taking the same, to the Secretary, to be by him recorded as foresaid; and afterwards, the like oath or affirmation shall be taken, certified and recorded in such manner and form as may be prescribed by law. The Governor shall receive an annual salary of fifteen hundred dollars as Governor, and fifteen hundred dollars as Superintendent of Indian affairs. The Chief Justice, and Associate Justices, shall each receive an annual salary of two thousand dollars. The Secretary shall receive an annual salary of fifteen hundred dollars. The said salaries shall be paid quarterly, from the dates of the respective appointments, at the Treasury of the United States; but no such payment shall be made until said officer shall have entered upon the duties of their respective appointments. The members of the legislative assembly shall be entitled to receive three dollars each per day during their attendance at the session thereof, and three dollars each for every twenty miles' travel in going to and returning from said sessions, estimated according to the nearest usually traveled route. And a chief clerk, one assistant clerk, a sergeant-at-arms, and door-kee0per, may be chosen for each house; and the chief clerk shall receive five dollars per day, and the said other officers three dollars per day, during the session of the legislative assembly; but no other officers shall be paid by the United States: *Provided*, That there shall be but one session of the legislative assembly annually, unless, on an extraordinary occasion, the Governor shall deem it expedient and proper to call the legislature together. There shall be appropriated, annually, the sum of fifteen hundred dollars, to be expended by the Governor, to defray the

contingent expenses of the Territory, including the salary of a clerk of the executive department; and there shall also be appropriated, annually, a sufficient sum to be expended by the Secretary of the Territory, and upon an estimate to be made by the Secretary of the Treasury of the United States, to defray the expenses of the legislative assembly, the printing of the laws, and other incidental expenses; and the Governor and Secretary of the Territory shall, in the disbursement of all moneys entrusted to them, be governed solely by the instructions of the Secretary of the Treasury of the United States, and shall, semi-annually, account to the said Secretary for the manner in which the aforesaid sums of money shall have been expended; and no expenditure, to be paid out of money appropriated by congress, shall be made by said legislative assembly for objects not specially authorized by the acts of Congress making the appropriations, nor beyond the sums thus appropriated for such objects.

SEC. 12. And be it further enacted, That the laws now in force in said Territory of Washington, by virtue of the legislation of Congress in reference to the Territory of Oregon, which have been enacted and passed subsequent to the first day of September, eighteen hundred and forty-eight, applicable to the said Territory of Washington, together with the legislative enactments of the Territory of Oregon, enacted and passed prior to the passage of, and not inconsistent with, the provisions of this act, and applicable to the said Territory of Washington, be, and they are hereby, continued in force in said Territory of Washington until they shall be repealed or amended by future legislation.

SEC. 13. And be it further enacted, That the legislative assembly of the Territory of Washington shall hold its first session at such time and place in said Territory as the Governor thereof shall appoint and direct; and at said first session, or as soon thereafter as they shall deem expedient, the legislative assembly shall proceed to locate and establish the seat of government for said Territory, at such place, as they may deem eligible; which place, however, thereafter be subject to be changed by said legislative assembly. And the sum of five thousand dollars, out of any money in the Treasury not otherwise appropriated, is hereby appropriated and granted to said Territory of Washington, to be there applied by the governor to the erection of suitable buildings at the seat of government.

SEC. 14. And be it further enacted, That a delegate to the House of Representatives of the United States, to serve for the term of two years, who shall be a citizen of the United States, may be elected by the voters qualified to elect members of the legislative assembly, who shall be entitled to the same rights and privileges as have been heretofore exercised and enjoyed by the delegates from the several other Territories of the United States to the House of Representatives, but the delegate first elected shall hold his seat only during the term of the Congress to which he shall be elected. The first election shall be held at such time, and places, and be conducted in such manner, as the Governor shall appoint and direct; of which , and the time, place and manner of holding such elections, he shall give at least sixty days' notice by proclamation; and at all subsequent elections the time, places, and manner of

holding the elections shall be prescribed by law. The person having the greatest number of votes shall be declared by the Governor to be duly elected, and a certificate thereof shall be given accordingly. The delegate from said Territory shall be entitled to receive the same per diem compensation and mileage at present allowed the delegate from the Territory of Oregon.

SEC. 15. And be it further enacted, that all suites, plaints, process, and proceedings, civil and criminal, at law and in chancery, and all indictments and informations, which shall be pending and undetermined in the courts established within and for said Territory of Oregon, by act of Congress, entitled "An act to establish the territorial government of Oregon." Approved August fourteen, one thousand eight hundred and forty-eight, wherein the venue in said cases, suits at law, or in chancery, or criminal proceedings, shall be included within the limits hereinbefore declared and established for the said Territory of Washington; then, and in that case, said actions so pending in the supreme or Circuit Courts of the Territory of Oregon shall be, by the clerks of said courts, duly certified to the proper courts of said Territory of Washington; and thereupon said causes shall, in all things concerning the same, be proceeded on, and judgments, verdicts, decrees, and sentences rendered thereon in the same manner as if the said Territory had not been divided. All bond, recognizances, and obligations of every kind whatsoever, valid, under the existing laws, within the limits of said Territory of Oregon, shall be held valid under this act, and all crimes and misdemeanors

against the laws now in force within the said limits of the Territory of Washington may be prosecuted, tried, and punished in the courts established by this act, and all penalties, forfeitures, actions, and causes of action, may be recovered and enforced, under this act, before the Supreme and Circuit Courts established by this act as foresaid: *Provided,* That no right of action whatever shall accrue against any person for any act done in pursuance of any law heretofore passed by the legislative assembly of the Territory of Oregon, and which may be declared contrary to the constitution or laws of the United States.

SEC. 16. And be it further enacted, that all justices of the peace, constables, sheriffs, and other judicial and ministerial officers, who shall be in office within the limits of said Territory of Washington when this act shall take effect, shall be and thereby are hereby authorized and required to continue to exercise and perform the duties of their respective offices, as officers of said Territory, until they or others shall be duly elected or appointed, and qualified, to fill their places in the manner herein directed, or until their offices shall be abolished.

SEC. 17. And be it further enacted, That the sum of five thousand dollars be, and the same is hereby, appropriated out of any moneys in the Treasury not otherwise appropriated, to be expended, by and under the direction of the Governor of Washington, in the purchase of a library, to be kept at the seat of government for the use of the Governor, legislative assembly, Judges of the Supreme Court, secretary, marshal, and Attorney of said Territory, and such other

persons, and under such regulations, as shall be prescribed by law.

SEC. 18. And be it further enacted, That until otherwise provided for by law, the Governor of said Territory may define the judicial districts of said Territory, and assign the judges who may be appointed for said Territory to be several districts, and also appoint the times and places for holding courts in the several counties or subdivisions in each of said judicial districts by proclamation, to be issued by him; but the legislative assembly, at their first or any subsequent session, may organize, alter, or modify such judicial districts, and assign the judges, and alter the times and places of holding the courts, as to them shall seem expedient and proper.

SEC. 19. And be it further enacted, That all officers to be appointed by the President, by and with the advice and consent of the Senate, for the Territory of Washington, who by virtue of the provision of any law of Congress now existing, or which may be enacted during the present session of Congress, are required to give security for moneys that may be intrustesd with them for disbursement, shall give such security at such time and place, and in such manner, as the Secretary of the Treasury may prescribe.

SEC. 20. And be it further enacted, That when the lands in said Territory shall be surveyed under the direction of the Government of the United States preparatory to bringing the same into market or otherwise disposing thereof, sections numbered sixteen and thirty-six in each township in said Territory shall

be, and the same are hereby, reserved for the purpose of being applied to common schools in said Territory. And in all cases where said sections sixteen and thirty-six, or either of any of them, shall be occupied by actual settlers prior to survey thereof, the County Commissioners of the counties in which said sections so occupied as aforesaid are situated, be, and they are hereby, authorized to locate other lands to an equal amount in sections, or fractional sections, as the case may be, within their respective counties, in lieu of said sections so occupied as aforesaid.

SEC 21. And be it further enacted, That the Territory of Oregon and the Territory of Washington shall have concurrent jurisdiction over all offenses committed on the Columbia River, where said river forms a common boundary between said Territories.

Approved March 2, 1853, [10 U.S. Statutes at large, c 90 p 172.]

Disposition of Organic Act of 1853:

Organic Act Of 1853 (10 St. at Large 172)	1873 Revised Statutes	Repealed by	Placement in United States Code
Section 1	§ 1839		T.48 § 1451
	§ 1840		T.48 § 1452
	§ 1898	Repealed by 47 S.L. 1429	T.48 § 1453
Section 2	§ 1841		T.48 § 1453
Section 3	§ 1843		T.48 § 1454
	§ 1844		T.48 § 1455

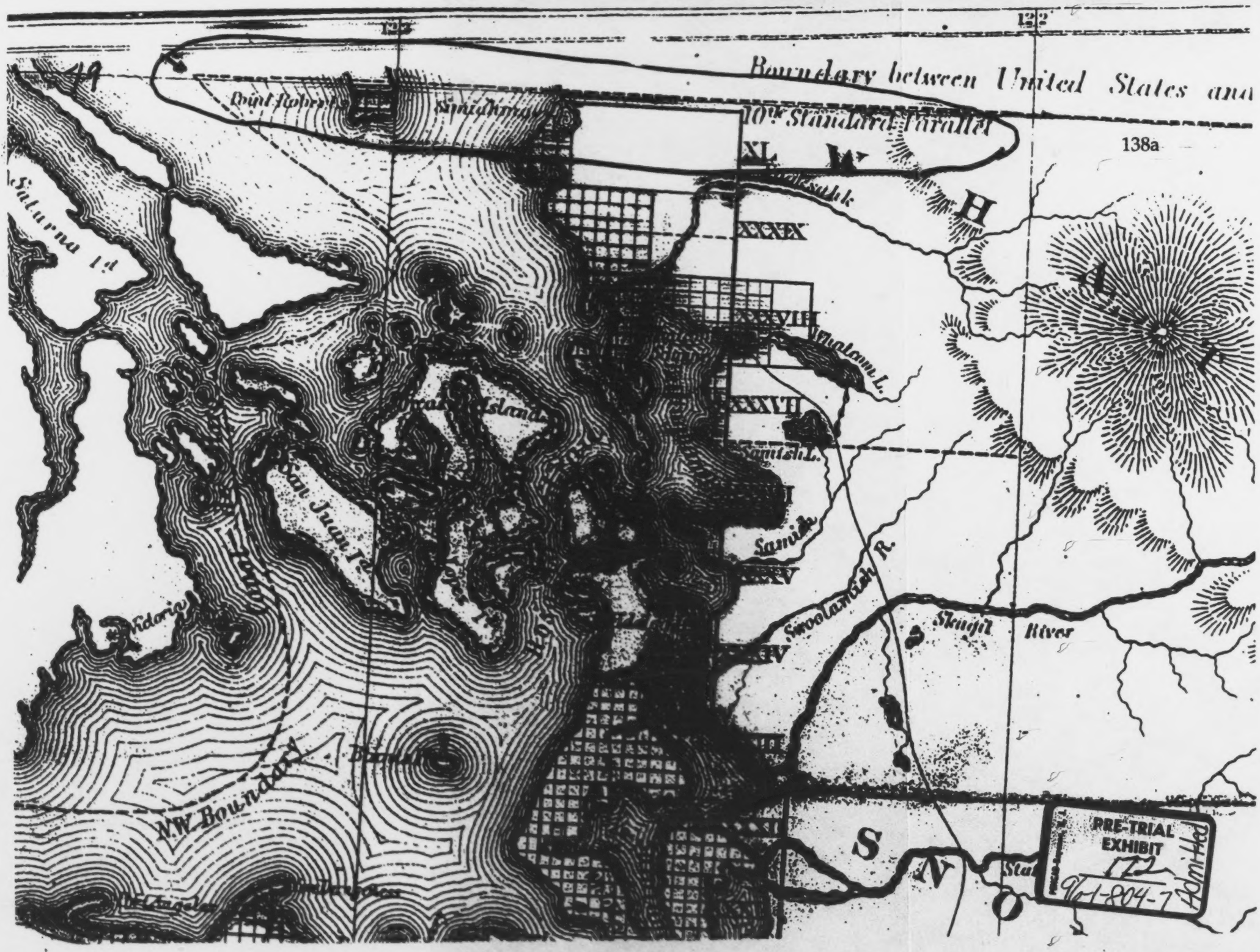
Organic Act Of 1853 (10 St. at Large 172)	1873 Revised Statutes	Repealed by	Placement in United States Code
Section 4	§ 1846	Repealed by 47 S.L. 1429 and in part 20 S.L. 193	
	§ 1847	Repealed by 47 S.L. 1429 and in part 20 S.L. 193	
	§ 1848	Repealed by 47 S.L. 1429 and in part 20 S.L. 193	
	§ 1849	Repealed by 47 S.L. 1429 and in part 20 S.L. 193	
	§ 1922	Repealed by 47 S.L. 1429 and in part 20 S.L. 193	
	§ 1923	Repealed by 47 S.L. 1429 and in part 20 S.L. 193	
Section 5	§1859	Repealed by 47 S.L. 1429	
	§ 1860		
Section 6	§ 1850	Repealed by 47 S.L. 1429	
	§ 1851	Repealed by 47 S.L. 1429	
	§ 1924	Repealed by 47 S.L. 1429	
Section 7	§ 1857		T.48 § 1458

Organic Act Of 1853 (10 St. at Large 172)	1873 Revised Statutes	Repealed by	Placement in United States Code
Section 8	§ 1854		
	§ 1860		T.48 § 1460
Section 9	§ 1854		T.48 § 1460a
	§ 1868		T.48 § 1463
	§ 1864		T.48 § 1463a
	§§ 702, 1865 1866, 1867, 1869, 1870, 1871, 1872 1883, 1907, 1909, 1910, 1911, 1912, 1926	Repealed by 47 S.L. 1429	
Section 10	§§ 1875, 1876, 1881, 1882	Repealed by 47 S.L. 1429	
Section 11	§ 1877	Repealed by 47 S.L. 1429	
	§ 1878		T.48 § 1465
	§ 1938	Repealed by 47 S.L. 1429	
	§ 1940	Repealed by 47 S.L. 1429	
	§ 1941	Repealed by 47 S.L. 1429	
Section 12	§ 1852	Repealed by 47 S.L. 1429	
Section 13	§ 1885	Repealed by 47 S.L. 1429	
	§ 1944	Repealed by 47 S.L. 1429	
Section 14	§ 1862	Repealed by 47 S.L. 1429	
	§ 1863	Repealed by 47 S.L. 1429	
	§ 1906	Repealed by 47 S.L. 1429	

Organic Act Of 1853 (10 St. at Large 172)	1873 Revised Statutes	Repealed by	Placement in United States Code
Section 15	No record	No record	No record
Section 16	No record	No record	No record
Section 17	§ 1953	Repealed by 47 S.L. 1429	
Section 18	§ 1873 §§ 1913, 1918	Repealed by 47 S.L. 1429	T.48 § 1453a
Section 19	§ 1951	Repealed by 47 S.L. 1429	
Section 20	§ 1947	Repealed by 47 S.L. 1429	
Section 21	§ 1950	Repealed by 47 S.L. 1429	

washington 75

BEST AVAILABLE COPY


Boundary between United States and
Saturna Id
San Juan I.
Victoria
N.W. Boundary
Samish L.
Samish R.
Swoolamish R.
Skagit River
S
N
O
PRE-TRIAL
EXHIBIT
Admitted
96-1-804-7

INTERNATIONAL BOUNDARY

FROM THE GULF OF GEORGIA

TO THE NORTHWESTERNMOST POINT OF THE LAKE OF THE WOODS

SHEET No. 1

SURVEYED UNDER THE DIRECTION OF

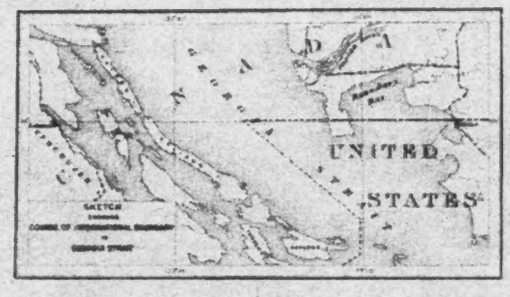
FOR THE UNITED STATES

O. H. TITTMANN, Superintendent Coast and Geodetic Survey

C. P. WALCOTT, Director U. S. Geological Survey

FOR HIS BRITANNIC MAJESTY

W. F. KING, Chief Astronomer of the Dominion of Canada



C A N A D A

B R I T I S H C O L U M B I A

N E W W E S T M I N S T E R D I S T R I C T

GEORGIA STRAIT (GULF OF GEORGIA)

W H A T C O M C O U N T Y

W A S H I N G T O N

C A N A D A

U N I T E D S T A T E S

FOR THE UNITED STATES

E. C. BARNARD, Chief Topographer,

Inspection of C. H. SINCLAIR, Chief Astronomer.

Triangulation by Coast and Geodetic Survey.

FOR HIS MAJESTY

J. J. McARTHUR, D. L. S., Surveyor in Charge.

Topography by R. J. CHILVER, D. L. S., and S. S. McCLARKE, D. L. S.

Surveyed in 1857.

Scale as here

Contour interval 100 feet.

Bottom is mean sea level.

We certify that this chart is a copy of Sheet No. 1 of the quadruplicate set of Fifty-nine (59) charts adopted by us under Articles VI and VII of the Treaty between Great Britain and the United States, signed at Washington April 11, 1908, on which we marked the Boundary Line as re-established by us in accordance with the provisions of the said Articles.

O. H. Tittmann
United States Commissioner

W. F. King
His Britannic Majesty's Commissioner

Boundary Monuments

On accepted sites

On new sites

Boundary Line

Approximate location of Boundary Line between monument intervals

Date of publication, 1913

SHEET No. 1

INTERNATIONAL BOUNDARY

FROM THE GULF OF GEORGIA
TO THE NORTHWESTERNMOST POINT OF THE LAKE OF THE WOODS

SHEET No. 2

SURVEYED UNDER THE DIRECTION OF

FOR THE UNITED STATES
O. H. TITTMANN
SUPERINTENDENT COAST AND GEODETIC SURVEY

C. O. WALCOTT
DIRECTOR U. S. GEOLOGICAL SURVEY

FOR HIS BRITANNIC MAJESTY
W. F. KING
CHIEF ASTRONOMER OF THE DOMINION OF CANADA

C A N A D A

B R I T I S H C O L U M B I A

N E W W E S T M I N S T E R D I S T R I C T

BOUNDARY BAY

SEMIAMOO BAY

W H A T C O M

DRAYTON HARBOR

C O U N T Y

W A S H I N G T O N

U N I T E D S T A T E S

FOR HIS MAJESTY

J. J. McARTHUR, D. L. S., SURVEYOR IN CHARGE
TOPOGRAPHY BY W. J. OSBURNE, D. L. S. AND R. S. McDIARMID, D. L. S.
SURVEYED IN 1907

FOR THE UNITED STATES

E. C. BARNARD, CHIEF TOPOGRAPHER
INSPECTION BY C. H. SINCLAIR, CHIEF ASTRONOMER
TRIANGULATION BY COAST AND GEODETIC SURVEY

Scale, miles

Contour interval 100 feet.
Datum is mean sea level.

We certify that this chart is a copy of Sheet No. 2 of the quadruplicate set of fifty-nine (59) charts adopted by us under Articles VI and VII of the Treaty between Great Britain and the United States, signed at Washington April 11, 1908, on which are marked the Boundary Line as re-established by us in accordance with the provisions of the said Articles.

O. H. Tittmann
United States Commissioner

W. F. King
His Britannic Majesty's Commissioner

Boundary Monuments
On original sites
On new sites
Boundary Line

Date of publication, 1913

SHEET NO. 2

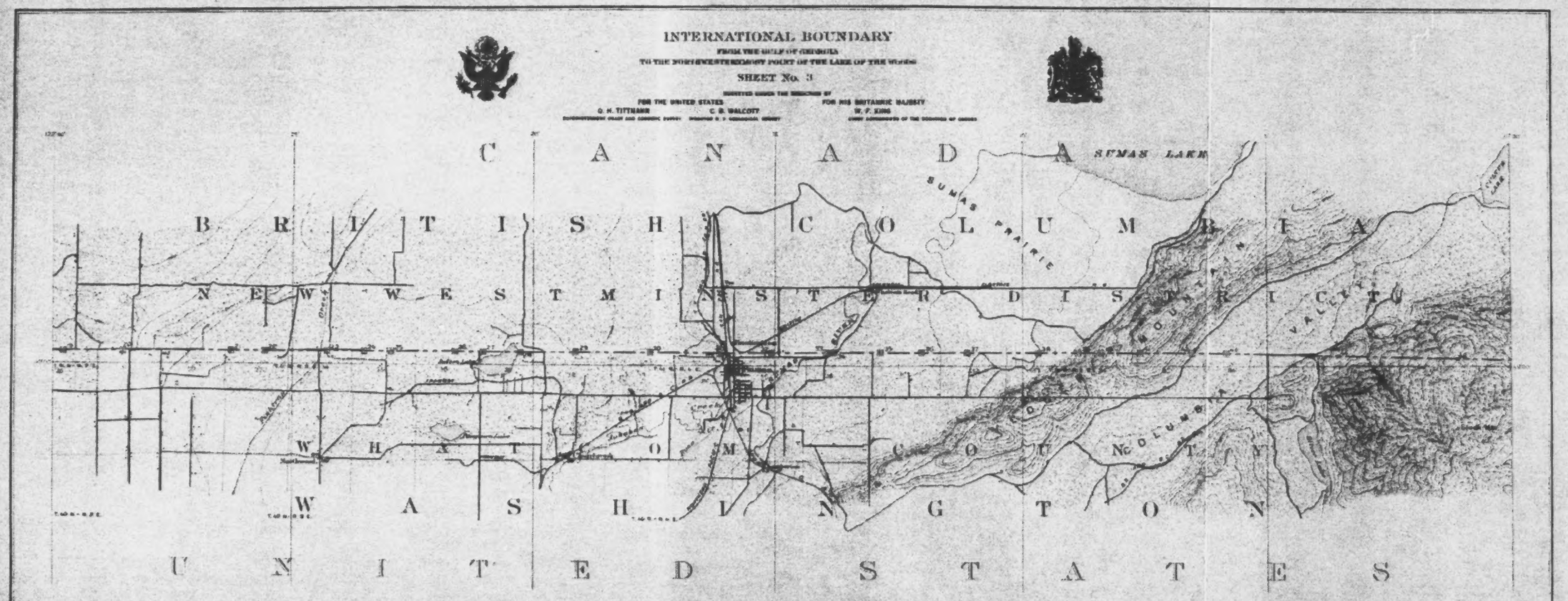
INTERNATIONAL BOUNDARY

FROM THE GULF OF GEORGIA
TO THE NORTHWESTERNMOST POINT OF THE LAKE OF THE WOODS

SHEET No. 3

SURVEYED UNDER THE DIRECTION OF

FOR THE UNITED STATES		FOR HIS BRITANNIC MAJESTY
O. H. TITTMANN	C. B. WALCOTT	W. F. KING



FOR HIS MAJESTY

J. J. MCARTHUR, D. L. S., SURVEYOR IN CHARGE.
TOPOGRAPHY BY H. J. OSLIFFE, D. L. S., S. S. INTERBERG, D. L. S., AND CHAS. COURTICE.
DRAWN IN 1908-09

FOR THE UNITED STATES

E. C. BARNARD, CHIEF TOPOGRAPHER.
INSPECTION BY C. H. SINCLAIR, CHIEF ASTRONOMER.
TRIANGULATION BY H. S. RUSSELL

Scale 1 mile = 1 inch

Contours (interval) 100 feet.

We certify that this chart is a copy of Sheet No. 3 of the quadruplicate set of fifty-nine (59) charts adopted by us under Articles VI and VII of the Treaty between Great Britain and the United States, signed at Washington April 11, 1908, on which we marked the Boundary Line as re-established by us in accordance with the provisions of the said Articles.

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Boundary Monuments
On accepted sites
On new sites
Boundary Line

Date of publication, 1912

SHEET NO. 3